

OPINIONS

OF THE
CORPORATION COUNSEL
and ASSISTANTS

JULY 1, 1973 to DECEMBER 31, 1979

Compiled and Edited under the Supervision of

WILLIAM R. QUINLAN

Corporation Counsel



CITY OF CHICAGO
DEPARTMENT OF LAW

VOLUME XXVII

PUBLISHED BY AUTHORITY OF THE CITY COUNCIL

1980

PREFACE

In 1871 the Corporation Counsel of the City of Chicago began the formal compilation and indexing of the Letters of Opinion of the Corporation Counsel. As a result, this Volume 27 is the latest entry in an unbroken historical record reflecting the work of the Corporation Counsel's office for over a century. Although the earlier volumes are now only of historical significance, the later volumes form a practical and authoritative reference source for public officials and lawyers working with current legal problems.

Each volume of the Opinions of the Corporation Counsel tends to reflect the legal problems and issues peculiar to its time. In this connection it is interesting to note that the index to Volume 27 contains extensive references to environmental control, civil rights, assistance for the handicapped, and federal relations, all of which are either new to this Volume or are greatly expanded as compared with previous volumes. In the same vein, this Volume represents the occasion on which it has been necessary to include a cross-reference table to provisions of the Illinois Constitution of 1970.

The contents of this Volume are the work product of the dedicated staff of assistants to the Corporation Counsel who authored the various letters of opinion. Those letters form a permanent monument to their ability and dedication which requires no elaboration.

I would also like to add to that record my personal observations concerning the Office of the Corporation Counsel. To have been Corporation Counsel of the City of Chicago is an honor of unique significance and the legal challenge it presents is both exciting and rewarding. This honor and challenge was indeed enhanced by the singular privilege of having been the first Corporation Counsel in our great city's history to have served as counsel for three Mayors. Particularly, to have been selected by Mayor Richard J. Daley as Corporation Counsel will always be of special importance to me. To have served Mayor Daley was an exceptional experience as he was truly a man of unusual inspiration, dedication and humanity who enhanced the lives of all who knew him.

The experience of having served under Mayor Bilandic during the transition of city government after the death of Mayor Daley was an awesome one, but one for which I am most appreciative as it engendered a true sense of contribution to our city during a

tumulous time. Finally, and with great gratitude, I wish to thank Mayor Jane Byrne for the opportunity to have helped modernize the Corporation Counsel's Office and to begin the course of the office in the 1980's.

However, even these great personal experiences do somewhat pale when I think of the outstanding men and women with whom I have worked in the Corporation Counsel's Office. It is truly to the work of the assistants and staff that any recognition of achievement should be addressed. They are the ones who have labored tirelessly on behalf of the citizens of the City of Chicago and who have obtained the successes of the office. To these men and women I extend my sincere gratitude and appreciation for their efforts and support as well as for their friendship and cooperation during my term of office.

Finally, I also wish to acknowledge with thanks the expert work of Professor Vincent F. Vitullo of DePaul University College of Law who compiled, edited and indexed this Volume as well as Volumes 25 and 26.

WILLIAM R. QUINLAN

Corporation Counsel.

November 28, 1980

CORPORATION COUNSEL OF THE CITY OF CHICAGO

Benjamin F. Ayer	1863-1865
Samuel A. Irvin	1865-1869
Murray F. Tully	1869-1873
Jesse O. Norton	1873-1874
T. Lyle Dickey	1874-1876
Elliott Anthony	1876-1878
Joseph F. Bonfield	1878-1879
Francis Adams	1879-1884
Frederick S. Winston	1884-1886
Francis A. Hoffman, Jr.	1886-1886
George M. Haynes	1886-1887
Oliver H. Horton	1887-1887
John W. Green	1887-1889
Jonas Hutchinson	1889-1891
John S. Miller	1891-1893
Adolf Kraus	1893-1894
Harry Rubens	1894-1894
John Mayor Palmer	1894-1895
William G. Beale	1895-1897
Charles S. Thornton	1897-1899
Charles M. Walker	1899-1903
Edgar Bronson Tolman	1903-1905
James Hamilton Lewis	1905-1907
Edward J. Brundage	1907-1911
William H. Sexton	1911-1914
John W. Beckwith	1914-1915
Richard S. Folsom	1915-1915
Samuel A. Ettelson	1915-1923
Francis X. Busch	1923-1927
Samuel A. Ettelson	1927-1931
Francis X. Busch	1931-1931
William H. Sexton	1931-1935
Barnet Hodes	1935-1947
Benjamin S. Adamowski	1947-1950
John J. Mortimer	1950-1955
John C. Melaniphy	1955-1964
Raymond F. Simon	1965-1969
Richard L. Curry	1970-1974
William R. Quinlan	1974-1980

TABLE OF CONTENTS

	PAGE
PREFACE	iii
AUTHORS OF THE OPINIONS	vii
EXPLANATORY NOTES	x
CHAPTER I. POWERS AND DUTIES OF CITY COUNCIL AND OFFICERS	
Sec. A. City Council	1
Sec. B. Police Department	10
Sec. C. Board of Health	35
Sec. D. Municipal Tuberculosis Sanitarium	44
Sec. E. Other Departments and Officers	46
CHAPTER II. RIGHTS AND DUTIES OF CITY EMPLOYEES	
Sec. A. Civil Service	59
Sec. B. Salaries	79
CHAPTER III. ANNUITIES AND BENEFITS FOR CITY EMPLOYEES	
Sec. A. Municipal Employees' Annuity and Benefit Fund	81
Sec. B. Firemen's Annuity and Benefit Fund	83
Sec. C. Policemen's Annuity and Benefit Fund	85
Sec. D. Laborers' and Retirement Board Employees' Annuity and Benefit Fund	91
CHAPTER IV. RELATION OF CITY WITH OTHER GOVERNMENTS	
Sec. A. Federal Relationship	94
Sec. B. Chicago Park District	103
Sec. C. Chicago Housing Authority	105
CHAPTER V. REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE	
Sec. A. Food and Dairy Products	108
Sec. B. Weapons	109
Sec. C. Gambling and Lotteries	111
Sec. D. Other Health and Welfare Regulations	113
CHAPTER VI. LICENSES AND PERMITS	
Sec. A. Liquor Licenses	120
Sec. B. State, Public Vehicle and Driver's Licenses ..	130
Sec. C. Amusement Licenses and Tax	147
Sec. D. Other Licenses and Permits	150

CHAPTER VII. BUILDING AND ZONING	
Sec. A. Building	160
Sec. B. Zoning	178
CHAPTER VIII. PUBLIC UTILITIES	
Sec. A. Railroads	206
Sec. B. Chicago Transit Authority	212
Sec. C. Other Public Utilities	213
CHAPTER IX. PUBLIC WAYS	
Sec. A. Dedication and Variation	217
Sec. B. Use of Streets, Alleys and Sidewalks	220
Sec. C. Advertising and Handbills	240
Sec. D. Traffic and Parking Regulations	243
CHAPTER X. FINANCE	
Sec. A. Appropriations and Taxes	254
Sec. B. Management of City Funds	266
Sec. C. Judgments and Claims	274
Sec. D. Bonds	296
CHAPTER XI. CITY PROPERTY	
Sec. A. Real Estate	299
Sec. B. Waterworks and Sewers	318
Sec. C. Taxation of City Property	323
CHAPTER XII. CONTRACTS	
Sec. A. Bids and Awards	325
Sec. B. Execution and Interpretation	340
Sec. C. Purchasing Agent	351
CHAPTER XIII. PUBLIC IMPROVEMENTS	
Sec. A. Airports	354
Sec. B. Construction	373
CUMULATIVE INDEX TO VOLUMES 24, 25, 26 AND 27	381
MUNICIPAL CODE CROSS-REFERENCE TABLE	527
ILLINOIS REVISED STATUTES CROSS-REFERENCE TABLE	549
1970 ILLINOIS CONSTITUTION CROSS-REFERENCE TABLE	573
TABLE OF CASES	575

AUTHORS OF THE OPINIONS

R. L. A.	Robert L. Abraham
A. A.	Ann Acker
R. J. P. B.	Ronald J. P. Bank
P. L. B.	Phillip L. Bronstein
W. C.	William Colson
R. L. C.	Richard L. Curry
J. F. C.	John F. Czachorski
J. P. D.	James P. Daley
F. J. D.	Frank J. Dolan
M. J. D.	Michael J. Dudek
R. W. F.	Robert W. Fioretti
M. J. F.	Michael J. Fogarty
R. F. F.	Richard F. Friedman
M. G.	Mark Goldstein
B. A. G.	Barry A. Gombberg
R. L. H.	Robert L. Hankin
A. H.	Allen Hartman
E. H.	Edmund Hatfield
M. J. H.	Martin J. Healy
R. H.	Richard Hikawa
M. S. J.	Michael S. Jordan
G. M. K.	George M. Keane, Jr.
M. J. K.	Michael J. Kelly
B. M. K.	Brian M. Kilgallon
F. H. K.	Frank H. Klass
G. S. L.	George S. Lalich
A. L.	Alan Lane
R. G. M.	Robert G. Mackey
J. K. M.	James K. Maremont
A. M.	Arthur Mooradian
E. L. N.	Earl L. Neal
B. J. O.	Bernard J. O'Hallaren
T. D. O.	Timothy D. O'Harg
R. O.	Roseann Oliver
M. J. P.	Marianne J. Parillo
D. P.	Daniel Pascale
J. R. P.	James R. Platt
M. L. P.	Manuel L. Port
W. R. Q.	William R. Quinlan
B. R.	Bernard Rane
K. R.	Kathleen Ransford
R. R.	Robert Retke

M. L. R.	.....	Melvyn L. Romanoff
S. B. R.	.....	Steven B. Ruben
H. S.	.....	Harry Sampson
K. J. S.	.....	Konstant J. Savickus
L. J. S.	.....	Lee J. Schwartz
P. M. S.	.....	Phillip M. Sheridan
H. A. S.	.....	Howard A. Shlay
J. A. S.	.....	Jerome A. Siegan
M. S.	.....	Michael Small
F. J. S.	.....	Frank J. Sulewski
H. A. T.	.....	Harold A. Tepper
H. F. W.	.....	Henry F. Weber
J. J. W.	.....	John J. Woczik
W. M. Z.	.....	William M. Zipperman

EXPLANATORY NOTES

SCOPE OF THIS VOLUME

The opinions in this Volume cover the period beginning with July 1, 1973, and ending with December 31, 1979. However, the opinions in this Volume are not all of the opinions issued by the Department of Law during that period of time. To include every opinion issued by the Department of Law would make this work unduly repetitious and would increase its bulk without any increase in its value as a reference tool. Therefore, only those opinions deemed to be of general significance were included in this Volume.

However, we hasten to advise City Officials that an expression of legal opinion issued by this office is still a binding opinion for their guidance regardless of the fact that it may not appear in this Volume.

SPECIAL FEATURES

To make this Volume a more valuable research tool, four cross-reference tables have been included. The first cross-reference table enables the reader to locate any letter of opinion in this Volume which directly cites and interprets a provision of the Chicago Municipal Code. The second table permits the reader to locate those opinions in this Volume which directly interpret any provision of the Illinois Revised Statutes. The third reference table is a table of cases which permits the reader to locate easily any case which was the primary subject matter of any opinion in this Volume. Finally, the fourth table lists any section of the Illinois Constitution of 1970 which is cited in a letter of opinion. All four tables are located in this Volume immediately following the index.

In addition, it should be noted that the index to this Volume is cumulative and covers the contents of this Volume as well as the contents of Volumes 24, 25, 26 and 27.

DATA GIVEN WITH OPINIONS

Above each opinion in this Volume there is printed the name of the office or officer to whom the opinion was written, the initials of the author of the opinion, and the date of the opinion. Occasionally, a letter of opinion is addressed to a private party having official business with the City. In such cases, the addressee of the opinion is designated by a descriptive term or by his initials.

OPINIONS
OF THE
CORPORATION COUNSEL
and ASSISTANTS

CHAPTER I—POWERS AND DUTIES OF CITY COUNCIL AND OFFICERS

Section A. CITY COUNCIL

RTA REFERENDUM—CONSTITUTIONAL CHALLENGE

(City Council Member—R. R.—July 9, 1974)

On June 28, 1974 the Illinois Supreme Court announced the entry of an order reversing judgments of the Lake County Circuit Court which had enjoined The Regional Transportation Authority, the Mayor and City Council of the City of Chicago and certain officers of the State of Illinois from exercising the powers conferred upon them by the Regional Transportation Authority Act set forth in chapter 111-2/3 section 701.01 et seq. of the Illinois Revised Statutes of 1973. The suit was filed by the State's Attorney of Lake County and sought to have the Regional Transportation Authority Act and the referendum therein mandated declared unconstitutional. Motions to dismiss the complaint were filed by the Regional Transportation Authority and the Mayor and City Council of the City of Chicago and were denied by the Circuit Court of Lake County. The Court thereupon issued its writ of injunction. Thereafter the Authority and the Mayor and City Council of the City of Chicago filed notices of appeal. Pursuant to the Illinois Supreme Court's determination that the public interest required expeditious adjudication of the matter direct appeal to that Court was allowed.

On appeal appellants argued that the Circuit Court had erred in its finding that the referendum proposition as statutorily specified and presented to the voters was invalid because not sufficiently informative. Appellants also presented argument supporting the constitutionality of other sections of the Regional Transportation Authority Act alleged by the complaint to be valid.

The Supreme Court delivered its decision reversing the judgments of the Circuit Court in a brief order and stated that an opinion setting forth the reasons for its action will be filed later.

PROPOSAL TO RESTRICT CONFESSION OF JUDGMENT CLAUSES

*(Deputy Chief Administrative Officer, Committee on Finance—
L. J. S.—July 26, 1973)*

Your letter of June 25, 1973, to the Corporation Counsel has been referred to me for reply. In the letter you ask that this office study and give a legal opinion on a proposed ordinance (attached) which prohibits leases for residential premises from containing powers of attorney to confess judgment.

Severe questions arise as to the legality of the proposed ordinance. This office views the home rule powers of the City of Chicago as tremendously broad, but does not believe them to be without limit, nor without question pending further judicial clarification.

For instance, if the judicial power is not part of the home rule grant, then the proposed ordinance could be declared void by finding that confession of

judgment is a judicially created remedy subject to judicial control. See Supreme Court Rule 236. 1971 Ill. Rev. Stat. ch. 110A, par. 236. See also 1971 Ill. Rev. Stat. ch. 110, par. 50. Although certain elements of the judicial power may reside in home rule units, there is certainly opinion otherwise. See discussion of the issue at the Constitutional Convention IV Record of Proceedings 3126-3138.

A second major objection to the legality of the proposed ordinance is that it is a regulation of purely private contractual relations, not subject to home rule powers. In particular, The Report of the Local Government Committee of the Constitutional Convention stated: "It is clear, however, that the powers of home rule units relate to their own problems, not to those of the state or the nation. Their powers should not extend to such matters as divorce, real property law, trusts, contracts, etc. which are generally recognized as falling within the competence of state rather than local authorities." VII Record of Proceedings 1621.

Although this office does not adhere to the view that these matters are totally outside the competence or regulation of a home rule unit, nevertheless such statements are in the record.

A further problem is the classification imposed by the proposed ordinance. Not all confessions of judgment are prohibited, but only those for the lease of residential premises. Other sorts of consumer leases or contracts for the sale of goods or services are excluded. The special treatment of such leases may make the proposal so narrow as to violate the equal protection clause of the United States Constitution, or similar provisions of the Illinois Constitution. Also the proposed ordinance does not distinguish between existing and future leases. As to existing leases, there is a question whether the proposal would be invalid as interfering with the right to contract protected by the contract clause of the U.S. Constitution.

Finally, the proposed ordinance prescribes that the Municipal Code of Chicago should be amended "by inserting therein, in its proper place and numerical sequence." It is the City Council which determines the place of ordinances within the Municipal Code, not the compiler. The form of the proposed ordinance is, therefore, deficient.

For all of the above reasons, it is our opinion that the ordinance creates so many difficult legal problems that its passage at this time is not recommended by this office.

PROHIBITION OF EMPLOYMENT AGENCY APPLICANT FEES

(Alderman—L. J. S.—August 14, 1973)

Your letter of July 18, 1973 addressed to Corporation Counsel Richard L. Curry, with regard to a proposed ordinance dealing with employment agencies has been referred to me for answer. Your question was whether the City Council could enact an ordinance forbidding employment agencies from charging applicants fees. In *Adams v. Tanner*, 244 US 590, (1917), the United States Supreme Court held unconstitutional a Washington State law forbidding employment agencies from charging fees in that it unduly restricted the liberty of the employment agency in engaging in useful business. It was stated that the act could not be sustained on the grounds that fees might be charged to em-

employers instead. The Court made its finding even though it was apparent the act was meant to cure severe evils in employment agency practices. Accord, *Hanley v. Moody*, 39 F. 2d 198 (N.D. Tx. 1930).

Any ordinance prohibiting employment agencies from charging fees to its applicants appears to be unconstitutional.

POWER TO INCUR DEBT

*(Acting Commissioner, Department of Water and Sewers—
W. M. Z.—April 5, 1974)*

Please refer to your communication of March 19, 1974 which reads as follows:

"Under the 1970 Illinois Constitution, Chicago, as a municipality over 25,000 in population, is a home rule unit. One of the powers of a home rule unit is the ability to incur debt. A limitation of debt under Article VIII, Section 6 (j) could be set by law approved by three-fifths of the members of each house of the state Legislature. This limitation would apply to debt other than that payable from ad valorem property tax receipts.

"The 1969 Illinois Revised Statutes, Chapter 24, Article Division 133, states that a municipality with a population over 500,000 owning and operating its own waterworks system, may pay for improving and extending that system by the issuance and sale of certificates of indebtedness. Originally, Chicago was authorized to issue \$60 million worth of Water Works System Certificates of Indebtedness. A \$5 million limitation with a 6% interest rate was established for 1972 and successive years.

"Our question is whether Water Works System Certificates of Indebtedness can be sold in excess of the \$5 million limitation and whether the certificates are limited to the 6% interest rate. Further, if the \$5 million limitation stands would it be considered, cumulative, that is, if no certificates were sold in one year could an additional \$5 million be sold in the following year."

In answer to your queries we wish to call to your attention Chapter 24, Cities and Villages Act, 1973 Illinois Revised Statutes, Section 11-133-1, wherein it is stated as follows:

"... These certificates shall bear interest at a rate of not to exceed 7 % per annum, payable semi-annually, and shall mature within 25 years from the date thereof; provided that any certificate issued and sold subsequent to December 31, 1965, shall mature within 40 years from the date of issuance.

"This amendatory Act of 1973 is not a limit upon any municipality which is a home rule unit."

Furthermore, we wish to call to your attention that portion of Section 11-133-2 which reads as follows:

"... The total amount of these certificates that may be issued in the year 1972 shall not exceed \$5,000,000 and in the year of 1973 and each year thereafter shall not exceed \$10,000,000. "This amendatory Act of 1973 is not a limit upon any municipality which is a home rule unit."

We trust this is the information you desire.

ELIGIBILITY FOR ALDERMANIC OFFICE

(Alderman—M. L. R.—April 16, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding whether or not a liquor salesman for a liquor distributor can run for the office of Alderman in the City of Chicago.

The qualifications for the office of Alderman are set out in the Illinois Municipal Code, Chapter 24, Illinois Revised Statutes, 1973. Section 3-4-15 of Article 3 provides as follows:

"No person shall be eligible to the office of alderman:

- (1) If, in addition to the requirements of Section 3-14-1, he does not reside within the ward for which he is elected; or
- (2) If he is in arrears in the payment of any tax or other indebtedness due to the city; or
- (3) If he has been convicted in Illinois State courts of malfeasance in office, bribery, or other corrupt crimes."

Section 3-14-1 of the Act adds the following requirements:

"No person shall be eligible to any municipal office unless he is a qualified elector of the municipality and has resided therein at least one year next preceding his election or appointment. . . . But no person shall be eligible to any municipal office who is a defaulter to the municipality."

In light of the foregoing, assuming all the above statutory requirements are satisfied, as well as all applicable election laws in the City of Chicago pertaining to nominating petitions, it is our opinion that an individual who is a liquor salesman for a liquor distributor can run for alderman. If, however, this individual is elected to the office of alderman, an immediate question would arise with respect to the liquor license issued to the distributor employing said person. Article VI, Section 120 (14) of the Illinois Liquor Control Act (Chapter 43, Illinois Revised Statutes, 1973) states as follows:

"No license of any kind issued by the State Commission or any local commission shall be issued to:

* * * *

"(14) Any law enforcing public official, any mayor, alderman, or member of the city council or commission, any president of the village board of trustees, any member of a village board of trustees, or any president or member of a county board; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor; . . ."

We are of the opinion that although this provision in the Liquor Control Act prohibits the issuance of a liquor license to an alderman, and certainly would be cause for revocation if an alderman was in any manner connected with the manufacture, sale or distribution of alcoholic liquor, it does not restrain any individual from running for the office of alderman.

AUTHORITY FOR RECEIPT OF FEDERAL FUNDS

*(Regional Transportation Planning Board—J. R. P.—
May 20, 1974)*

In response to your request dated May 8, 1974, requesting statutory authority creating the City of Chicago, etc., please be advised that it is our opinion as follows:

1. The City of Chicago was incorporated by Act of the General Assembly dated March 4, 1837; the same being ratified and continued by act published as Illinois Revised Statutes 1973, Chapter 24, Paragraph 1-1-3;

2. The City of Chicago, as a municipal corporation, may apply for and receive grants from the United States of America. Illinois Revised Statutes 1973, Chapter 29, Paragraph 33a; and

3. The City of Chicago may expand its own monies for corporate business, (IRS 1973, Chapter 24, Paragraph 8-1-2), and by ordinance dated July 5, 1972, the Mayor of the City of Chicago was authorized to provide the City of Chicago's share of matching funds for Urban Mass Transportation Planning Studies from staff services.

OMNIBUS VOTE

(Chicago Title Insurance Company—R. L. C.—June 4, 1974)

This letter is in response to your Objection #9 on the above-captioned commitment.

The ordinance vacating the subject property was passed on February 27, 1974 by the unanimous vote of all the 47 Aldermen present and voting on that day. The recorded vote of 35 yeas and 10 nays was simply the result of an "omnibus vote" which is a vote tallying technique used by the City Council to expedite its proceedings when there are numerous non-controversial matters pending in a given session. Instead of taking an individual vote on each of those non-controversial ordinances, an "omnibus vote" is taken at the end of the Council session and that tally is applied to all matters passed unanimously that day regardless of how many Aldermen were actually present and voting on any given ordinance.

In addition to the non-controversial nature of the ordinance and its unanimous passage, it should be further stated the City has already accepted Sixty-Six Thousand (\$66,000.00) Dollars as compensation for the vacation of that portion of North Howe Street and it is the opinion of the Law Department that the estoppel principle would apply to defeat any challenge to the validity of this ordinance.

DEDICATION OF LAND BY RESOLUTION

*(Commissioner, Department of Development and Planning—
H. A. T.—October 28, 1974)*

An opinion has been requested of this office concerning the validity of a City Council Resolution authorizing the opening of an additional area for the widen-

ing of parts of Harrison Street and Racine Avenue, duly adopted by the City Council of the City of Chicago on August 21, 1974.

This Resolution was adopted pursuant to the request of the Department of Urban Renewal of the City of Chicago. The land that was designated for said street widenings is owned by the City of Chicago and no question has been raised as to the right, power or jurisdiction of the City to dedicate said land for said purposes. There is no statutory stricture on said power. The objection raised is to the form in which said dedication was effectuated; that is by Resolution rather than by Ordinance.

It is to be noted that the Resolution in question was connected with the Ordinance reading as follows: "Vacation, closing and *widening* of certain streets and alleys in block bounded by West Congress Parkway, West Harrison Street, South Loomis Street and South Throop Street." Below said heading the recital in regard to the Ordinance reads as follows:

"The Committee on Local Industries, Streets and Alleys submitted a report recommending that the City Council pass a *Proposed Ordinance* and a *Proposed Resolution* transmitted herewith.

"On motion of Alderman Aiello said proposed Ordinance and said proposed Resolution were passed by yeas and nays as follows:

41 yeas — no nays

Thereupon the Ordinance was passed and following the Ordinance were the words: "The following is said Resolution as adopted with the foregoing Ordinance." Then follows the Resolution pertaining to the widening of Harrison Street and Racine Avenue in which the question has been raised.

It is clear that the Ordinance and Resolution were considered as one enactment by the City Council and the vote taken to adopt said Ordinance and Resolution was unanimous.

Generally a Resolution authorizes administrative or ministerial acts, citing *People ex rel Sweitzer vs. City of Chicago* (363 Ill. 409), *Anderson vs. Village of Berwyn* (135 Ill. App. 8). On the other hand an Ordinance authorizes action which is permanent in nature. Whether an act by a City Council is administrative or permanent in nature is often difficult to determine, and the Courts are beginning to take the position that whether a legislative action is designated "Resolution" or "Ordinance" is not the important factor but rather it is what the substance of the act provides and whether the adoption of the act followed the formal procedures required by the legislative body to enact legislation.

We quote from Volume 9, on page 121 and 122 of the Opinions of the Corporation Counsel and Assistants as follows:

Where the charter of a municipality and the statute is silent as to the mode in which the City Council shall perform an act, the decision of the Council may be evidenced by a resolution, an order or an ordinance. In such case the mere form will not affect the validity of the action of the Council if it is adopted with all the formalities required in the case of an ordinance. The substance and not the form of the corporate act is what governs. (Dillon on Mun. Corp. 5th Ed., Sec. 571; *City of Chicago vs. McKechney*, 91 Ill. App. 442, 454.)

"The doctrine is stated thus in *McQuillin on Mun. Corp.*, Sec. 333;

"Where the resolution is passed with all the formality of an ordinance, it thereby becomes a legislative act, and it is immaterial whether called an ordinance or a resolution."

The statement of the law is again reiterated in the case of *Houston vs. Village of Maywood*, 138 N.E.2nd, page 37; on page 40 the following quotation is stated by the Court:

"[7,8] Plaintiff's further contention, that the district board's petition for annexation was null and void because it was authorized by resolution instead of by ordinance, is without merit. The general rule in this and other jurisdictions is that, where the charter of a municipality is silent as to the mode in which the governing body shall perform an act, the decision of the governing body may be evidenced by either a resolution or an ordinance. Only where the charter requires an act to be done by ordinance, or where such a requirement is implied by necessary inference, a resolution is insufficient. *People ex rel. Sweitzer vs. City of Chicago*, 363 Ill. 409, 2 N.E.2d 330, 104 A.L.R. 1335; *Chicago & N.P.R. Co. vs. City of Chicago*, 174 Ill. 439, 51 N.E.596; *The People ex rel. Conlon vs. Mount*, 186 Ill. 560, 58 N.E. 360; *Collins vs. City of Schenectady*, 256 App.Div. 389, 10 N.Y.S. 2d. 303; *City of Barre vs. Perry & Scribner*, 82 Vt. 301, 73 A.574."

More recently in the case of *Village of Hoffman vs. Meir* (4 Ill.App.3d 948) the Village Act was designated as an ordinance but read:

"Be it Resolved"

The Court there stated "despite the erroneous choice of words they meet the requirement expressing upon their faces the authority by which they are enacted and all other formalities were observed."

The case goes on further to state that where statutes are silent as to the mode in which a governing body of a municipality shall perform an act the decision of such governing body may be evidenced by either a resolution or ordinance.

In the factual situation before us, where the ordinance and resolution are coupled in the vacation and opening of certain streets where the formalities of adopting an ordinance are followed, where the same vote by the City Council coupled the ordinance and resolution and approved the same unanimously where there is no statutory stricture regarding widening of streets, it is our opinion that the resolution is valid and binding upon the City of Chicago.

REPOSSESSED HUD PROPERTY

*(Commissioner, Department of Development and Planning—
E. L. N.—February 27, 1975)*

Recently you advised this office of a Federal Program in which the Department of Housing and Urban Development is transferring to municipalities, property it has repossessed, for a nominal consideration. You recalled that on July 10, 1974, the City Council authorized the acquisition of five parcels of said HUD repossessed property for a consideration of One Dollar each, provided the City reconvey to a non-profit group which would undertake to rehabilitate the properties. You also pointed out that these five parcels were in the designated Lawndale Conservation Area, and acquisition and rehabilitation of property in designated Conservation Areas of the City was authorized under the Illinois Urban Renewal Consolidation Act of 1961.

You are presently requesting our opinion as to the authority of the City to acquire and dispose of HUD repossessed property when said property does not come under the aegis of the Urban Renewal Consolidation Act of 1961.

Prior to the adoption of the Illinois Constitution of 1970, some doubt may have been raised as to the authority of the City to acquire, rehabilitate and sell property for private use outside of Urban Renewal Project Areas. However, since the adoption of the 1970 Constitution, it is our opinion that the City has the power and the authority to acquire HUD repossessed properties for a nominal consideration and to resell the same with such conditions and provisos that it desires.

The 1970 Illinois Constitution provides:

"SECTION 6. POWERS OF HOME RULE UNITS

(a) Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."

(m) Powers and functions of home rule units shall be construed liberally.

Since the adoption of the 1970 Illinois Constitution, most of the cases construing Section 6 have dealt with taxes, however, *Peters vs. Springfield*, 57 Ill. 2d, 142 and *People, ex rel vs. Beck*, 54 Ill. 2d, 567, indicate no intention of the Supreme Court to read restrictions into the large Home Rule powers granted by the Constitution.

To answer your question specifically, it is our opinion that the City Council has the authority to adopt an ordinance approving acquisition by the City of HUD repossessed properties within the boundaries of the City, for a nominal consideration and authorizing the re-sale of the same to private persons, imposing such conditions and requirements it deems to be in the best interests of the City.

MATCHING FUNDS—ACQUISITION OF LANDS FOR PRESERVATION

(Commissioner of Public Works—H. A. T.—June 4, 1976)

Recently you submitted a proposed Agreement between the City of Chicago and the State of Illinois in which the State would grant one-half the cost of acquisition of acreage in connection with the redevelopment of the Prairie Heritage District. You also submitted a draft of a proposed ordinance authorizing the execution and approval of said Agreement.

You requested our opinion as to the legality of the proposed Agreement and the authority of the City to direct the execution of the same. Chapter 24, Section 11:48.2 of the Illinois Revised Statutes adopted in 1963, granted municipalities the *power to act to preserve Historical and other Special Areas*, including the power to acquire land for said purposes.

Article VII, Section 6(a) of the Illinois Constitution of 1971 also grants Home Rule municipalities generally said authority.

Chapter 85, Sections 2101-2111 of the Illinois Revised Statutes provides for the grant of funds from the State to municipalities for the acquisition of open space land. The statute limits the grant in fiscal year 1976, and thereafter, to 50% of the required funds, thus, necessitating a matching fund contribution by the City.

We conclude there is ample legal authority for the City of Chicago entering an Agreement with the State to accept a grant in consideration of the City acquiring specified parcels of land for development of the Prairie Heritage

District and providing matching funds. However, it is not clear whether Section 1 of the proposed ordinance refers to approving the acceptance of \$302,000 from the State, or approves the matching fund expenditure by the City, or both. In the event you intend this ordinance to include an authorization by the City to expend \$302,000 of matching funds, we believe this should be specifically alluded to.

GRANT FOR PRESERVATION OF HISTORICAL LANDMARKS

*(Commissioner, Department of Public Works—
M. S.—July 6, 1978)*

The proposed ordinance attached hereto authorizes the Mayor and City Clerk to execute an agreement between the City and the State of Illinois Department of Conservation. The contract provides that the State will grant \$25,000.00 of Federal conservation funds to the city provided the city meet the grant with matching funds.

The purpose of the grant is to relocate and renovate the historical landmark, Henry B. Clarke House, located at 1841-45 S. Indiana Ave., Chicago.

The Department of Conservation of the State of Illinois was created by the Illinois Legislature and its make-up and powers are found in Chapter 127 Section 63-b, and following Sections of the Illinois Revised Statutes of 1975. Implicit in the four corners of said Act is the power to contract with the Federal government for federal financial aid and the power to encourage the conservation of historical sites in Illinois by providing grants to State Agencies and Municipalities.

The Illinois Legislature also adopted legislation granting municipalities powers to preserve and rehabilitate landmark sites. Chapter 24 Sections 11 : 48 : 2 - 1, and following, of Illinois Revised Statutes. This Act was implemented by a supporting City Council Ordinance adopted January 18, 1957, and amended January 17, 1968 (Municipal Code Chapter 21-64).

By virtue of said statutes and ordinance the City of Chicago and the Illinois Department of Conservation have the power and authority to enter into a grant-contract for the preservation of Historical Landmarks.

We are returning your proposed ordinance and supporting documents. Upon the passage of the attached ordinance by the City Council the Mayor will have the authority to execute the attached grant-contract.

SIMULTANEOUSLY HELD CITY POSITIONS

(Alderman—L. S. B.—September 12, 1979)

Recently you requested my opinion concerning the appointment of Leon Despres to serve as a member of the Chicago Plan Commission at the same time that he holds the position of Parliamentarian. Your question was whether there might be a conflict of interest where one person held both positions simultaneously.

Conflicts of interest arise generally where public officers may receive pecuniary gain under a contract made by his public employer. In the absence

of a pecuniary gain, however, the law also disqualifies public officers holding positions which are inconsistent in the sense that duties of one position include supervision over the other.

In the present case Mr. Despres' existing position, described as "Parliamentarian," is in fact that of a Special Assistant Corporation Counsel of the City whose function is to advise the presiding officer of the City Council with respect to its rules or order. The position to which Mr. Despres has been nominated; that of a member of the Chicago Plan Commission is, unlike the former position, unpaid. Because the two positions have very different functions, and neither is in a position or has the duty of passing upon the other, it appears that nothing is inconsistent where one person occupies both. Similarly, a financial conflict of interest would only arise in a concrete situation; there is nothing inherent in the present situation which would suggest that such an eventuality might occur.

As a result, it is my conclusion that Mr. Despres' appointment to the Chicago Plan Commission is not inconsistent with his position as Parliamentarian.

Section B. POLICE DEPARTMENT

RELEASE OF POLICE HOME ADDRESSES IN CIVIL RIGHTS SUITS

*(United States District Court Judge—M. S. J.—
October 16, 1973)*

Upon the occasion of our appearance before you for a status call on September 26, 1973 you were asked by counsel for the plaintiff, Mr. Eskridge, to rule upon his oral motion seeking to compel the defendants, peace officers, to disclose their home addresses. Although I did object to the substance of their motion I advised your Honor that I did not wish to place before you any objection to the form by which they brought this matter to the Court.

Although your Honor suggested a ruling would be forthcoming within a short period of time and that written briefs would be unnecessary, I assume that your comment in regard to waiving the submission of written briefs was based upon my representation to you that I was unaware of any *written* order or memorandum of decision by any Judge relative to excusing a peace officer from supplying his home address in a civil rights suit. Since our appearance, I have recalled the case of *Escareno vs. City of Chicago*, et al., 72 C 2423, wherein Judge Thomas McMillen ruled that the home address of Chicago Police Officers need not be given to the plaintiff in a civil rights suit brought under Title 42 U.S.C. § 1983.

Attached hereto please find a copy of the Memorandum Decision of Judge Thomas R. McMillen pertaining to certain discovery matters including the submission of the home address of defendant police officers with the accompanying minute order.

I have made an additional copy of Judge McMillen's decision and order and under separate cover I am forwarding the same to Mr. Eskridge and Mr. Reid, plaintiff's counsel.

JURISDICTION ON NON-PUBLIC ROADWAYS

*(Associate Vice President, Chicago State University—
R. B.—November 26, 1973)*

In your letter of October 16, 1973, you state "the roads . . . are located on University property and are under the full jurisdiction of the University." You also indicate that these roads serve only University users. These factors make the roads here in question non-public.

The Chicago Police Department has limited jurisdiction on non-public roadways. They can issue tickets for traffic violations involving Reckless Driving, Driving Under The Influence of Intoxicating Liquor or a Narcotic Drug and Leaving The Scene Of An Accident.

Our jurisdiction in other types of traffic cases is limited to public roadways.

CUSTODY OF PERSONAL PROPERTY UPON ARREST

*(Acting Superintendent of Police—J. K. M.—
December 3, 1973)*

Our Office is currently defending James Conlisk, Officer William Durkin and the City of Chicago, in the above cited case. This lawsuit is a class action filed in the United States District Court contending that procedures currently being employed by the Chicago Police Department in seizing personal property from persons arrested denies those persons of their constitutional rights.

The right of the police officer to take personal property from a person arrested and what must be done with this personal property subsequent to its being taken, are covered in the following statutes of the State of Illinois:

CHAPTER 141.

"141. [Application of act.] § 1. This act is applicable to all personal property of which possession is transferred to a police department or other law enforcement agency of a county, city, village or incorporated town, under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen or otherwise illegally possessed, except property seized during a search and retained and ultimately returned, destroyed or otherwise disposed of pursuant to order of a court in accordance with Section 108-11, 108-12 or 114-12 of the 'Code of Criminal Procedure of 1963' or other law hereafter applicable to property thus retained, and except property of which custody and disposition is prescribed by Section 4A-101 through 4A-113 of the 'Illinois Vehicle Law', approved July 11, 1957, as amended.

CHAPTER 141.

"142. Property believed to be abandoned, etc.—Inquiry and notice to owner—Return of property.] § 2. Such property believed to be abandoned, lost or stolen or otherwise illegally possessed shall be retained in custody by the sheriff, chief of police or other principal official of the law enforcement agency, which shall make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof, and shall return the property after such person provides reasonable and satisfactory proof of his ownership or right to possession and reimburses the agency for all reasonable expenses of such custody."

CHAPTER 38—CRIMINAL LAW AND PROCEDURE

"108-2. § 108-2. Custody and Disposition of Things Seized.) An inventory of all instruments, articles or things seized on a search without warrant shall be given to the person arrested and a copy thereof delivered to the judge before whom the person arrested is taken, and thereafter, such instruments, articles or things shall be handled and disposed of in accordance with Sections 108-11 and 108-12 of this Code. If the person arrested is released without a charge being preferred against him all instruments, articles or things seized, other than contraband, shall be returned to him upon release.

* * * *

"108-11. § 108-11. Disposition of Things Seized.) The judge or court before whom the instruments, articles or things are returned shall enter an order providing for their custody pending further proceedings."

The attorney for the plaintiff has offered to dismiss this lawsuit if a police regulation were to be enacted providing that when property is taken from a prisoner in a lock-up, by a police officer, the Court before whom the arrested person is taken be advised either by the police officer appearing in Court or the Court Sergeant that such property has been taken and to request a determination by the Judge as to the custody of the property pending further proceedings. This appears to our office to be a reasonable request, since such a regulation would merely be a reiteration of Chapter 38, Section 108-11 of the Illinois Revised Statutes, which requires the Judge to enter an order pending custody of seized property. The Judge, I am certain, would order custody of the property to be retained by the police pending the disposition of the criminal charge. Nothing in a proposed regulation would require the police to return the seized property, if no request for an order from the Judge be made. The property, in effect, would continue to be retained.

Our Office has discussed the procedures of the Police Department for seizing, inventorying, retaining and returning property taken from persons arrested with Lt. Duellman of the Evidence and Recovered Property Section. It is the opinion of our office that the procedures presently employed do not violate a person's constitutional rights.

Since the attorney for the plaintiff has made what we consider such a minor demand in settlement, it is our opinion that this case should not be submitted to a Federal District Court Judge. Said Judge could find certain procedures to be violative of a person's civil rights. Such a decision could require numerous changes to be made by the Police Department in its current procedures for retaining property. It is the possibility, although certainly not probability, of such a decision that we feel should be avoided.

In the present case, the plaintiff Howard Barksale, did in fact have stolen property taken from him, said property not being returned. The case filed, however, is a class action which would apply to all persons who are arrested and have property seized. The facts, therefore, are not limited to the particular case of Howard Barksale.

It is for the above reasons set forth, that our Office recommends that a police regulation be promulgated that the Court before whom the arrested person is taken be advised that property has been taken from said person.

REVISED RULES OF CONDUCT

*(Acting Superintendent, Department of Police—
R. L. C.—December 18, 1973)*

By telephone you have informed that the Police Board recently considered and adopted a new set of rules of conduct for the Chicago Police Department. You have also informed that it will take a minimum of two weeks time to secure printing and distribution of the new rules throughout the Department.

During this interim, and so that no member of your command may be charged with failure to obey rules which have not been published or distributed, you should continue to utilize the "old" rules as they relate to the conduct of the members of the Department.

When the "new" rules of conduct have been printed and distributed, you should then inform the membership that their future conduct will be measured in accordance therewith.

RELEASE OF IMPOUNDED VEHICLE TO LIEN HOLDERS

*(Department of Police—R. R.—W. R. Q.—
December 31, 1973)*

This letter is in response to inquiries concerning the release of vehicles to lienholders from the police auto pound. Article 36 of the Illinois Criminal Code authorizes seizure of vehicles used in the commission of certain offenses and section 36-1a of the Code provides for release of these vehicles to lienholders by the State's Attorney. Such a release is, of course, to be distinguished from replevin recoveries which were the subject of an earlier letter directed to your attention on August 23, 1973.

Pursuant to our conversations with the State's Attorney's Office, in the future the State's Attorney's Office will authorize the release of vehicles under Article 36 by letter to the Department. This letter will recite conditions of the release and will have attached a copy of a hold-harmless agreement signed by the lienholder for the protection of the State's Attorney and the City. Upon receipt of these documents and payment of applicable fees and charges it is our opinion that the vehicle may be released to the lienholder.

NON-DUTY DISABILITY BENEFITS FOR PREGNANCY

*(Illinois Fair Employment Practices Commission—
M. J. P.—March 7, 1974)*

We hereby acknowledge receipt of the charge filed by Angela M. Schreiner alleging unfair employment practices committed by the Department of Police of the City of Chicago. Please consider this communication as our response to said charge as provided for in your rules.

The Department of Police of the City of Chicago denies that it now or has ever discriminated against complainant, Angela M. Schreiner, on the basis of her sex or on any other basis. Additionally, the exact question that Ms.

Schreiner raises in her complaint, has already been resolved in her favor by the Corporation Counsel. By letter dated March 7, 1973, the Corporation Counsel has advised the Department of Police that any benefits payable for non-duty disability must also be paid for pregnancy. As the attorney for the City of Chicago, the Corporation Counsel, under City ordinances, is empowered to render written legal opinions which express the official legal position of the City of Chicago. Accordingly, it is the official position of the City that Ms. Schreiner is entitled to benefits as a result of her pregnancy. Hence, it is clear that there can be no basis for the allegations contained in her complaint. If for some reason Ms. Schreiner has not received all the benefits due her because of her pregnancy, it can only be because of some administrative difficulty or error, inasmuch as stated above, that it is City policy that Ms. Schreiner has a legal right to such benefits. This office and the Police Department will be happy to assist Ms. Schreiner in obtaining the benefits properly due her.

For the reasons stated above we respectfully request that your Commission enter an order dismissing the charge as well as ordering that no complaint be issued against the Department of Police of the City of Chicago.

AUCTIONED VEHICLES SUBJECT TO LIENS

(Superintendent of Police—R. R.—April 29, 1974)

This is in response to your letter of February 26, 1974 in which you requested advice on the propriety of the auction of vehicles subject to liens.

It is the opinion of the Corporation Counsel that towed vehicles in which no interest is expressed by the title holder should be delivered over to lienholders upon presentation of proof of the lien and a properly executed indemnification agreement in substantially the form of that attached and payment of the appropriate towing and storage fees. As you know, the Illinois Vehicle Code (Illinois Revised Statutes of 1971, Chapter 95 1/2, Section 4-200, et seq.) and Sections 27-428 and 27-429 of the Municipal Code of Chicago make detailed provisions for the procedure in such cases. This policy, of course, relates only to vehicles properly impounded as a result of parking violations and abandonment. Autos in Police Department custody pursuant to Article 36 of the Illinois Criminal Code remain the responsibility of the State's Attorney's Office and can be disposed of only pursuant to that Office's direction.

NOTICE AND HEARING REQUIREMENT— AUTO TOWING

(Superintendent of Police—R. L. C.—May 20, 1974)

In response to your letter of May 10, 1974, please be advised that the Graff case (*Graff v. Nicholl*, 73 C 170), supported by numerous United States Supreme Court decisions, has made it abundantly clear that due process requires that notice and opportunity for a hearing be accorded to owners of "abandoned" vehicles prior to towing in those instances where such owners' identity may be practicably ascertained.

In its explanation for the need of said prior hearing, the Court, on page 19, added:

"The Supreme Court has emphatically rejected the argument that the cost, in time, effort, and expense, of holding a prior hearing constitutes a legiti-

mate justification for ignoring this aspect of Fourteenth Amendment protections (citing cases)."

It is therefore apparent that the proposed procedure, although it may cause complaints from persons anxious to have such vehicles removed from public ways, is a necessary constitutional requirement that cannot be ignored. This new procedure should not greatly affect or delay the program as we have known it in the past, however, because as you know, the notice and hearing requirements apply only to a small percent of the entire effort; i.e., currently licensed vehicles.

This office is presently awaiting the commencement of the Department's procedure and stands ready to aid in expediting the required hearings upon request.

PROPOSED OFFICE OF PROFESSIONAL STANDARDS

(Police Board—M. S.—June 18, 1974)

Your letter addressed to Richard L. Curry, Corporation Counsel of the City of Chicago with the enclosed correspondence from the Chicago Law Enforcement Study Group, has been referred to the undersigned for review and reply.

In your letter you request on behalf of the Members of the Police Board a rebuttal to the Chicago Law Enforcement Study Group's critique of Superintendent Rochford's proposed Office of Professional Standards (OPS).

The criticism leveled against the Office of Professional Standards by the Chicago Law Enforcement Study Group is as follows:

The OPS merely repackaged a program of police investigation of the Police.

That it rejects a key element of reform independent civilian investigation and fact finding.

That the alleged plan of the Superintendent for monitoring by civilians of cases already investigated by the police, though injecting some civilian participation, only can determine if the OPS is not working; it cannot investigate ongoing cases for discipline where deserved.

That contrary to the recommendation by the International Association of Chiefs of Police he is again combining investigation of general police performance with investigation of police misconduct.

From a reading of this criticism it is blatantly clear that either the Chicago Law Enforcement Study Group is ill informed as to the structure, makeup and purpose of the Office of Professional Standards or that they have inexcusably misconstrued Superintendent Rochford's proposal.

On February 11, 1974, Superintendent Rochford issued Pax 501, in which among other items he announced his proposal of the Office of Professional Standards and set out its structure, duties and purpose.

The Office of Professional Standards is a separate and distinct entity which reports to and is directly responsible to the Superintendent, who by statute and ordinance is directly responsible for the administration of the Police Department and discipline within the Department.

The administration of the OPS will be sought from outside the Police Department among persons trained in law or science, who have demonstrated effectiveness as investigators or prosecutors and will be staffed with civilian and police investigators, and we are informed that the latter will be subsequently phased out to where the OPS will be staffed solely by civilian investigators. Recently the Superintendent has appointed three attorneys to head the Office of Professional Standards, a white, black and latino. These men demonstrated their dedication to law, law enforcement, public service and the public in their previous roles as dedicated, honest, vigorous prosecutors in the United States Attorney General's Office, United States Attorney's Office, State's Attorneys Office and the Illinois Attorney General's Office. Neither of them has any previous connection with the Department as police officers.

The OPS is charged with investigating and eliminating police brutality and corruption and removes from the Internal Affairs Division the responsibilities of investigating, what the Chicago Law Enforcement Study Group terms police misconduct as opposed to police performance.

The OPS will have the resources and authority to develop Separation Cases and Criminal Prosecution Cases.

Included among the personnel of the OPS will be investigators trained and skilled in the detection of financial crimes and net worth investigations to facilitate investigations of alleged or suspected corruption within the Department.

In addition, to this essentially civilian investigative body, the Superintendent proposed that any and all investigations of police brutality will be available for inspection at any time by authorized members of the Bar and the Chicago Commission on Human Relations.

It should be noted that the Chicago Law Enforcement Study Group accusations against the Superintendent that he has demonstrated police loyalty over police duty, is irresponsible and brings in question the honesty of their purported purpose. They state that numerous officers have flunked lie tests concerning their involvement in corruption, yet they have simply been reassigned, instead of bringing charges. The members of the Board are aware that the results of lie tests are not admissible into evidence before the Board or in Criminal Court. This knowledge should be known, to at least Mr. Marshall Patner, the author of the letter who is an attorney.

The same is true with regard to the alleged transfer of police secretaries who have engaged in institutional shakedowns. Mere suspicions without hard evidence does not a Separation case or Criminal case make.

We hope that this rebuttal of the erroneous criticism and accusations by the Chicago Law Enforcement Study Group meets with yours and the members of the Police Board's satisfaction.

PROPOSAL FOR REIMBURSEMENT— UNPAID WAGES

*(Chairman, City Council Committee on Police, Fire, Civil
Service, School and Municipal Institutions—
M. S.—July 3, 1974*

Your recent letter and attached resolution addressed to Richard L. Curry, Corporation Counsel of the City of Chicago has been referred to the undersigned for review and reply.

In your letter you request that this office consider the proposal introduced into the City Council and referred to your Committee which would require the City to reimburse retired police officers for wages lost during the 1930's when these officers were not paid their full salaries. You further request an opinion whether this proposal could be adopted by the City of Chicago in view of the decision of the Illinois Appellate Court wherein this matter was litigated some years ago.

There were actually three cases wherein this matter was litigated. *People ex rel. Mulvey, v. City of Chicago*, 292 Ill. App. 589 (1937); *People ex rel. Griffin v. City of Chicago*, 382 Ill. 500 (1943); *Deasy v. City of Chicago*, 412 Ill. 151 (1952). In each of these cases city employees sued to collect the difference in the salaries they actually received and the salaries they were allegedly entitled to for the years 1932 to 1936. They claimed that the City Council in its annual appropriation bill for 1933 and subsequent years set their salaries at certain amounts and then appropriated approximately 80 per cent of said amounts. This they claimed entitled them to be paid the difference between the salaries fixed and the amounts appropriated and paid. In addition, to ruling against the plaintiffs in these cases on the grounds of laches, the courts held that the annual appropriation bills fixed plaintiffs salaries at the amounts actually appropriated. As the court in *Mulvey* supra stated at pp. 607-608:

"Neither law, reason, nor custom, supports it. In *Gathemann v. City of Chicago*, supra, it was said p. 297, 'If a statute or ordinance which authorizes the appropriation of money for the payment of a salary to a public officer or employee is indefinite or uncertain the doubt should be resolved by adopting the smaller amount; (7 *Tyrrell v. Mayer*, 159 N.Y. 239). We are convinced that we should be announcing a new and dangerous rule to apply in the interpretation of annual appropriation bills if we were to sustain plaintiffs' position. *We conclude that the annual appropriation bills fixed the salaries of the plaintiffs employed by the City in its corporate capacity at the amounts actually appropriated.*" (Emphasis supplied.)

It is quite clear that aside from the legal niceties of laches and the statute of limitations the retired police officers in question *had* and *have* no meritorious legal claim to reimbursement.

The question therefore is whether the City Council can for want of a better word grant a gratuity at this time to these officers. The 1870 Constitution of the State of Illinois which was in force and effect until the 1970 Constitution became effective on July 1, 1971 provided in Article IV, Section 19 as follows:

"The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or contract made, nor authorize the payment of any claim, or part thereof, hereinafter created against this State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; provided, the General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion."

The provision would be equally applicable to the City and other municipal corporations because the State could not grant a power broader than it itself possesses. *Cremer v. Peoria Housing Authority*, 399 Ill. 579 (1948); *Schuler v. Board of Education*, 370 Ill. 579 (1939). The courts in interpreting this provision of the constitution have held that when payment was made to an officer or employee of the State for services rendered, no award for additional compensation could be made, *Clayton v. State*, 21 Ill. Ct. Cl. 321; *Pieman v. State*, 18 Ill. Ct. Cl. 64; *Sholson v. State*, 12 Ill. Ct. Cl. 26; *Smith v. State*, 11 Ill. Ct. Cl. 374.

In *Raines v. Board of Trustees*, 365 Ill. 610 (1937); *Porter v. Loehr*, 332 Ill. 353 (1928), the Court invalidated under Section 19 an effort to increase the

pensions of already retired employees and in *People ex rel Schmidt v. Yerger*, 21 Ill. 2d 338 (1961), the Court held that the claim of a widow of a retired fireman was derivative and as such she could not benefit from the pension increase for widows being violative of Section 19.

The Constitution of 1970, however, has completely omitted Article IV, Section 19 of the 1870 Constitution but provides in Article VIII, Section 1:

"(a) Public funds, property or credit shall be used *only for public purposes*.

"(b) The State, units of local government and school districts shall incur obligations for payment or make payment from public funds only as authorized by law or ordinance." (Emphasis supplied.)

The key words in the 1970 Constitution is "*only for public purposes*," and the question to be resolved is whether the proposed resolution to reimburse these retired police officers for the alleged promised salaries they did not receive constitutes a public purpose. In *People ex rel McDavid v. Barrett*, 370 Ill. 478 (1939), the Court sustained an appropriation by the legislature to widows of deceased circuit judges in amounts equal to their salaries from the date of their death to the time of the qualification of their successors and held it was not violative of Sections 19 and 20 of Article IV and Section 16 of Article VI of the 1870 Constitution and was for a public purpose. The court on p. 482 stated:

"What is for the public good and what are public purposes are questions which the legislature must in the first instance, decide."

"If it can be seen that the purpose sought to be obtained is a public one and contains the elements of public benefit, the question how much benefit is thereby derived by the public is one for the legislature and not for the courts."

In *People ex rel Douglas v. Barrett*, 370 Ill. 465 (1939) the Court sustained an appropriation to a widow of a deceased legislator as a public purpose and held that it did not violate Section 19 of Article IV of the 1870 Constitution in that the recipient was not in the public service. The court stated at p. 467:

"Whether an appropriation is for a public purpose depends on the particular facts in each case. The act in this case provides in substance that: Whereas Warren B. Douglas died after his election as a member of the Fifty-ninth General Assembly, and, whereas; the State would have paid him the sum of \$3,500.00 to Sadie Douglas, the widow of Warren B. Douglas. This language indicates that the legislature made appropriation to satisfy what it recognized as a strong moral or equitable obligation to appellant.

"Appropriations made to discharge such an obligation are public purposes and are within the power of the legislature. (*Hagler v. Small*, 307 Ill. 460;)" (Emphasis Supplied.)

In determining whether the proposed resolution could be considered a public purpose it would be advisable to consider *People ex rel. Schmidt v. Yerger*, 21 Ill. 2d 338 (1961), wherein the court distinguished the Barrett cases heretofore cited, and stated at p. 343:

"Both of these cases are based upon the assumption that a moral obligation existed although the facts revealed no legal claim or any kind. The claim of the plaintiff here is not based upon any moral obligation where no legal claim can be made. Her claim is based solely on section 6 of the Firemens' Pension Fund Act and is a statutory claim."

From a reading of the proposed resolution it would seem that it is based on the premise that there is a moral obligation though one not legally enforceable at present, and in that vein requests your committee to hold hearings and determine the origin of the claims, the promises and assurances allegedly given by the city government. A moral obligation based upon an erroneous or invalid legal claim would require an equity determination by the Court based on some theory not developed or presented by the resolution. It should be pointed out that the events of the 30's were not specifically directed to members of the Police Department but involved essentially all departments of City Government.

MEDICAL EXPENSES INCIDENT TO INVESTIGATION

(Superintendent of Police—M. S.—July 8, 1974)

Your recent letter and attachment addressed to Richard L. Curry, Corporation Counsel City of Chicago has been referred to the undersigned for review and reply.

In substance your letter addresses itself to the question of payment of hospital bills incurred where it is necessary for a police officer to submit a suspect to a medical examination to determine whether or not the suspect driving has been impaired by some other intoxicating compound *other than alcohol*. You ask in as much as the medical examination is being conducted for the benefit of the Department investigation, should the claims for payment by the Hospital be referred to the City Clerk's office for payment or should the hospital be referred to the County for reimbursement?

Under the provisions of Chapter 38, par. 103-2(c) of the Illinois Revised Statutes (1973) which provides that "[P]ersons in custody shall be treated humanely and provided with proper food, shelter, and if required, medical treatment," and Chapter 74, par. 19, Illinois Revised Statutes (1973) which states that the warden of the jail shall furnish necessary bedding, clothing, fuel and medical aid for all prisoners under his charge. . . ." The Court in *Silver Cross Hospital v. Boyder*, 351 Ill. App. 283 (1953), held that the responsibility for the care of those persons who are charged with violating state statutes and are in custody clearly falls upon the Sheriff of the County. The Attorney General of Illinois in an opinion dated September 27, 1971, determined that a ". . . wounded person accused of a crime is technically in the custody of the Sheriff," and the County is therefor liable for and required medical treatment.

However, the situation which your letter poses is quite different. In your situation even if the arrestee is charged with the violation of a State Statute as opposed to a city ordinance he is not in need of medical treatment, because of any illness or injury which would place the responsibility for said treatment upon the County. The sole purpose for the medical treatment received by the arrestee is to further a Department investigation to determine if in fact he has violated any statute or ordinance. Under these circumstances we find no obligation accruing to the County to pay for said medical treatment. It would seem that these expenses should be treated in the same manner as other investigative expenses of the Department.

EXAMINATION OF PAST DISCIPLINARY RECORDS

(*Superintendent of Police—R. F. F.—July 16, 1974*)

This is in answer to your recent letter inquiring into the propriety of the Police Board's examining the past disciplinary records of men after they have been found guilty of charges filed against them. The purpose of such examination would be to determine the extent and kind of disciplinary action to be taken. There appears to be no objection to this procedure; rather it is highly regarded.

The courts have stated in criminal cases, that for the purpose of determining the sentence to be imposed, a court should, after conviction, consider the evidence as to the moral character, life, family, occupation and criminal record of the defendant in aggravation or mitigation of the sentence. See, e.g., *People v. Tice*, 89 Ill. App. 2d 313 (1967); *People v. Mann*, 27 Ill. 2d 135 (1963); *People v. Biggs*, 89 Ill. App. 2d 324 (1967).

This procedure is now codified in the Unified Code of Corrections. Sections 1005-3-2 and 3 (Ill. Rev. Stat. 1973, ch. 38, pars. 1005-3-2 and 3) state that no defendant shall be sentenced without a presentence report, which report shall contain the defendant's history of delinquency or criminality.

Since the procedure you suggest is acceptable in criminal cases, it is no less acceptable in the Board's determination of extent of punishment. Accordingly, we see no objection to the hearing procedure you are considering. In fact, as stated before, it is viewed quite favorably.

ADVERTISING OF POLICE MAGAZINE SALES

(*Mineola, N. Y. Attorney—M. S.—August 7, 1974*)

Your recent letter addressed to the Law Department, City of Chicago, has been referred to the undersigned for review and reply.

In your letter you seek a reply from us regarding a proposal of your client, Organization Services Corporation (O.S.C.). Your client proposes to enter into an arrangement with local and or state police officers' organizations, whereby your client would publish a magazine concerning and in the name of the particular organization, and would be compensated for its services out of the proceeds of advertising sales with the remainder going to the organization.

Rule 52 of the Rules and Regulations of the Chicago Police Department subscribes as prohibited the following:

"Seeking or soliciting contributions of any kind from anyone, by any means, for any purpose, under any circumstances, including collections for charitable purposes by any member or his agent, group of members or their agents, and including any sale or solicitation by any member or his agent, group of members or their agents, of advertising for any police journal, magazine or other publication identified with the Chicago Police Department or any association of its members, except as specifically authorized by resolution of the Police Board."

From the aforequoted rule it is clear that your client's proposal would violate the Police Department's Regulations, thereby subjecting the organization, its members or both to disciplinary actions, unless specifically authorized by the Police Board of the City of Chicago.

TOWING OF ARRESTEE'S VEHICLE

(Superintendent of Police—R. L. C.—August 6, 1974)

In response to that proposed General Order submitted to this office on January 8, 1974, and the subsequent correspondence and conversations between your department and my office, please be advised as follows:

The only portion of such General Order relating to recent federal court decisions is that part of Paragraph III A thereof, entitled "Arrestee's Property," and therefore my response is directed and limited solely to that sub-paragraph.

It is my opinion that said sub-paragraph should be amended to provide as follows:

"A vehicle under the control of a person at the time of his arrest is not subject to an immediate tow unless:

1. The arrestee or owner requests that the vehicle be towed, or
2. The arrestee or owner does not authorize another person to take control of the vehicle, and either
 - a. The vehicle cannot be legally, safely and continuously parked at or near the scene of the arrest, or
 - b. The vehicle cannot be legally and safely driven to the place of detention by authorized police personnel or the arrestee, or
3. The vehicle would otherwise be classified as an immediate tow."

LICENSE REVOCATION PROCEDURE—
SPECIAL POLICE

(Chicago attorney—W. R. Q.—October 23, 1974)

This letter is in response to your recent request that this office confirm in writing the position stated in our meeting of September 20, 1974 concerning procedures to be followed respecting the denial or revocation of a special policeman license.

Any person denied certification as a special policeman, or whose certification is to be revoked, is entitled to both notice and hearing as provided in Chapter 101 of the Municipal Code of the City of Chicago. It is conceivable that there are emergency situations which would justify less stringent procedures than those provided in Chapter 101, with respect only to the suspension of the special policeman's right to carry a firearm. Such emergency suspension would, of course, be available pending disposition of a hearing for revocation of certification.

In any event, it is clear to us that an arrest record, alone, would provide insufficient cause either for denial or revocation of certification. Such an arrest record, however, would be a factor to be taken into consideration. Such a procedure is employed in determining the qualifications of police officers subject to Civil Service and we believe it reasonable to apply the same standard to those persons seeking certification under Chapter 173 of the Municipal Code.

We are hopeful that this confirms your understanding of the City's position and will provide the statement that you requested.

AMBIGUOUS TESTIMONY—DISCHARGE PROCEEDINGS

(Superintendent of Police—M. J. K.—November 25, 1974)

Having studied the evidence prepared by the Department for the Corporation Counsel, relevant to the above cause, I am of the opinion that the manifest weight of that evidence does not support the disciplinary action proposed.

The fundamental problem is the credibility of the two officers who arrested the respondent. Without going into the details of the discrepancies present, suffice it to say that the reports filed by two other officers also present at the incident in question as well as the statements of three lay witnesses also there present, differ in several significant respects from the arresting officers' account. Inasmuch as the charges against respondent depend to a great extent upon the questionable reports of the arresting officers, it is unreasonable to assume that the charges will be upheld on the basis of such evidence.

This problem coupled with the strong implication that respondent's past disciplinary record weighed heavily on the decision to discharge rather than suspend respondent, contrary to Police Board policy, lends further impetus to dropping the present discharge proceedings.

I am enclosing a copy of Sergeant Zuelke's excellent Evaluation Report for its more expansive treatment of the facts. If you have any questions concerning this matter, please feel free to contact me at any time.

AUTHORITY TO ARREST—VIOLATION OF FEDERAL LAW

*(Commander, Intelligence Division—A. L.—
September 10, 1974)*

Your request for an opinion as to the authority of the Chicago Police Department to make an arrest for violation of federal law has been referred to the undersigned for consideration and response.

Since Section 112 of Title 118 of the U.S. Code does not extend the power of arrest to local police authorities for violation of this act, the validity of any potential arrest for its violation must be determined by the law of the state wherein the arrest was made—*Reed v. U.S.* 401 F. 2d 756. Under Chapter 38, Section 107-2 of the Illinois Revised Statutes, a police officer may arrest a person when: "He has reasonable grounds to believe that the person is committing or has committed an offense." Offense is defined as "Violation of any penal statute of this state"—Chapter 38, Section 2-12. Under Section 11-25 of the Municipal Code, Chicago Police Officers have the power "to arrest all persons found violating any Municipal Ordinance or any criminal law of the state." Clearly, there is no authority given to the Chicago Police Department to make arrests for violation of federal law. Only if the conduct involved would concurrently be a violation of City Ordinance or state statute could the offender be arrested and any evidence be turned over to federal authorities for the federal violation—*U.S. v. Thompson* 420 F 2nd 536. For example, if a protester picketing in front of a foreign embassy were to strike another person the Chicago Police could arrest said protester for battery (a violation of state criminal code) and then subsequently turn the offender and any incriminating evidence

over to a federal marshal for arrest based on violation of Title 18 Section 112 of the U.S. Code. However, unless there is a corresponding authority to arrest based on probable cause to believe the suspect has violated state statute or municipal ordinance, an arrest by Chicago Police based only on a violation of federal law is impermissible.

ENFORCEMENT OF FEDERAL COPYRIGHT LAWS

(Chicago attorney—A. A.—Undated)

Your letter of September 19, 1973, has been directed to me for consideration and reply. The letter involves the attempts of the American Society of Composers, Authors, and Publishers (ASCAP) to collect license fees for the public performance of copyrighted musical works from the proprietors of certain shops in the 18th Police District. You request that members of the 18th District be advised as to the legality of ASCAP's licensing agreement.

This office renders no opinion as to the proper interpretation of applicable Federal Copyright Law. The commander of the 18th District had been informed that the district members should not become involved in a private dispute and that ASCAP's agents should not be arrested for merely attempting to collect license fees. He has been advised further, however, that this in no way means that members of the 18th District may not properly make an arrest should ASCAP's agents violate any law of the state of Illinois or ordinance of the City of Chicago in the course of collecting the fees.

PRODUCT ENDORSEMENT

(Superintendent of Police—R. L. H.—May 20, 1975)

Your letter of April 7, 1975, refers to us for our review and comments a letter dated March 27, 1975, from the Dow Corning Corporation wherein a two year comparison test of their silicone brake fluid in police cars at no cost to the City of Chicago (but for regular maintenance personnel) is proposed.

We have reviewed the aforesaid proposal and the attachments thereto setting forth the newly revised Federal Motor Vehicle Safety Standard #116, DOT #5, and the certification that the DOW Corning product meets the said standard.

In addition, private discussions were had with persons familiar with the development of the silicone brake fluid with the net result of said discussions being very favorable.

Basically, we find nothing objectionable with the proposal since it does appear that if the silicone brake fluid can perform as it is represented, there will be a marked safety improvement and maintenance reduction which will not only be a benefit to the City, but to other police departments and, eventually, to the general public.

We do, however, have a hesitancy and this relates to the promotion of the product by Dow Corning as an aftermath of the evaluation tests on our police cars. This hesitancy relates to the City policy of non-endorsement of any specific product. If Dow Corning were allowed to promiscuously promote usage of their silicone brake fluid based upon favorable results of the evaluation test in our police cars, it would be definitely implied that the City of Chicago is

making an endorsement of the Dow Corning product. It would, therefore, be necessary to include in any agreement entered into for this evaluation an absolute prohibition against any use of the test results, either periodically or at the end of the two-year period, without prior written approval by the City of the content of any such use. We do not expect any difficulty from Dow Corning in this regard.

Since our private discussions also revealed that silicone brake fluid is not compatible with existing brake fluid, it might be suggested that each vehicle equipped with silicone fluid be further equipped with a sealed can of said fluid in the trunk for emergency additions when necessary outside of the maintenance garage.

It is our opinion, then, that subject to our comments regarding promotion of the product, we find nothing legally objectionable to the proposed test evaluation of Dow Corning silicone brake fluid and, in fact, believe that such a proposal may very well be extremely beneficial to the City in the long run.

Although a copy of this letter is being sent to Dow Corning, we suggest that your office make further contact with them to implement the evaluation testing.

WITHDRAWAL OF CHARGES

(Superintendent of Police—M. J. K.—July 9, 1975)

It is the considered opinion of our office that the charges and specifications filed against Crossing Guard Odessa Smith, on or about May 20, 1975, be withdrawn. A copy of said charges and specifications is attached.

Mrs. Smith was charged with violating Rule 1 in that she was supposedly convicted of a criminal offense, i.e. being in the possession of and control of gambling paraphernalia. On May 21, 1973, Mrs. Smith resigned from the Department. On November 29, 1973 she was given one year court supervision on the criminal offense. Mrs. Smith was rehired by the Department February 10, 1975. The Department at that time had full knowledge of the charges previously filed against Mrs. Smith.

Inasmuch as the Rule 1 violation charged cannot stand since court supervision is not a conviction, and, inasmuch as all evidence relative to that criminal offense was destroyed after the criminal hearing, the Department is left with no competent evidence to substantiate a case. Moreover, extensive efforts were made to obtain the criminal transcript of the hearing involving Mrs. Smith. Neither that transcript of the hearing nor the order of the court administering the supervision could be found.

All of this, coupled with the fact that the Department rehired Mrs. Smith with full knowledge of the prior criminal offense, warrants the withdrawal of the charges heretofore pending against her. Accordingly, I hereby request your permission to petition leave of the Police Board to withdraw said charges.

FINANCIAL LIABILITY FOR MINOR'S MEDICAL EXAM

(Superintendent of Police—R. F. F.—July 28, 1975)

We have received your letter requesting an opinion whether a police officer who authorizes a medical examination for a minor in his custody under the

authority granted by a General Order of the Circuit Court of Cook County, Juvenile Division, would incur financial responsibility for either himself or the City of Chicago in the event that the child's parents refuse to pay the cost of the examination. The General Order, issued by the chief judge of the Juvenile Division of the Circuit Court of Cook County, authorizes a law enforcement officer to seek a medical examination for juveniles in need who come to his attention.

It is our opinion that a police officer will not incur any financial liability for either himself or the City if he takes a minor for such an examination.

If a police officer authorizes a medical examination pursuant to the General Order, he is doing so in order to obtain the necessary medical information to assist in the determination of where to place the child, in accordance with the Juvenile Court Act, §§ 3-1, 3-4 (Ill. Rev. Stat. (1973), ch. 37, pars. 703-1, 703-4).

When medical attention is furnished a child, for whatever reason, the parents are responsible for payment. In the case of *Charbonneau v. Norton*, 263 Ill. App. 341 (1931) the court held that where a parent wholly fails and refuses to furnish necessary support to his infant child the law will imply a promise on his part to reimburse anyone who renders support. Medical expenses have been held to be a necessary expense for which parents are liable. *Graul v. Adrian*, 32 Ill. 2d 345 (1965).

Furthermore, by statute, family expenses for necessities are chargeable upon the property of both husband and wife, who may be sued jointly or separately. Ill. Rev. Stat., 1973, ch. 68, § 15. Medical expenses are such a necessary family expense. *Abraham Lincoln Memorial Hosp. v. Gordon*, 111 Ill. App. 2d 179 (1969).

To be liable the parents need not have authorized the medical attention. In the case of *Abraham Lincoln Memorial Hosp. v. Gordon*, a Mr. Dixon brought an unconscious woman into the hospital claiming to be her husband and signed forms agreeing to pay for services rendered to her. Subsequently it was determined that the woman was not married to Mr. Dixon, but was the wife of Mr. Gordon, from whom she had been separated for thirteen years. The Illinois Appellate Court held that Gordon was responsible under the family expense section of the Husband and Wife Act for the services rendered to his wife.

The situation in the Abraham Lincoln Hospital case presented a situation analogous to one a policeman might find himself in. Even though he might authorize the medical examination of a child, this would not relieve the parents of the responsibility for paying for services rendered to their child.

Accordingly to the Juvenile Court Act, certain rights and responsibilities remain with the parent after transfer of custody of a child. These responsibilities include the responsibility for support of the child. (§ 7-4, Ill. Rev. Stat. 1973, ch. 37, par. 707-4). Since transfer of custody of a child to some other person does not relieve the parent of the responsibility to support his child, a medical examination which occurs prior to determining whether to transfer the child will be chargeable to the child's parent.

If the child's parents cannot pay for a medical examination because they have inadequate resources, then the duty to pay for the expenses falls to the County. Section 7-3 of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 707-3) provides that when the court orders medical treatment for a child, if the treatment is rendered in a private institution, the court may order the county to pay. The General Order referred to above may be interpreted as a standing order of court to render medical attention to children in need.

In order for a physician or hospital to seek recovery from a policeman requesting an examination, they would have to do so under a theory of implied contract. For such a contract to exist, the policeman would have had to accept a service which benefited him. A child's medical examination could be of no benefit to the policeman nor to the City, itself. Moreover, it cannot be said that the officer requested the service on behalf of the City, since he is without authority to bind the city in a contract. *Green v. City of Danville*, 350 Ill. App. 440 (1953).

Therefore we are of the opinion that when a police officer in the performance of duty and acting under the authority of the General Order of the Circuit Court or otherwise, authorizes a medical examination for a minor, he incurs no liability for either himself or the City.

USE OF HEARING OFFICERS—DISCIPLINARY CHARGES

(President, Police Board—M. J.—October 9, 1975)

On September 26, 1975 the Supreme Court filed its decision in the above-captioned case. The decision of the Police Board discharging Lieutenant Paglini, which had been overturned by the Circuit Court, was reinstated and affirmed by the Supreme Court. In the Circuit Court Paglini's contention that his Police Board hearing was invalid because conducted by a hearing officer rather than a member of the Board was overruled. However the Circuit Court had accepted his contention that the Board's conclusion that he was guilty of accepting a gratuity was contrary to the evidence.

The Supreme Court affirmed the holding that Paglini's hearing was valid, stating that Section 11-3 of the Municipal Code of the City of Chicago which authorizes the appointment and use of hearing officers in disciplinary proceedings was a proper exercise of the City's home rule power. However, the Court reversed the Circuit Court's finding that the Police Board's findings had been contrary to the manifest weight of the evidence. For these reasons the Board's discharge order was reinstated.

REVISION OF MEDICAL STANDARDS FOR POLICE EMPLOYMENT

(C. E. T.—J. A. S.—February 27, 1976)

This letter is in reply to your inquiry as to the status of Ivory C. Dowdell, who was found in 1973 to be medically disqualified for the position of patrolman in the Chicago Police Department. In February, 1973, Mr. Dowdell was examined by physicians and found to have "dysplasia of the right hip joint with chronic lateral dislocation and shortening of the femur." Such condition makes Mr. Dowdell unqualified for police work.

In June, 1974, the Chicago Civil Service Commission and various parties to a lawsuit in the United States District Court agreed to a revision of the medical standards for police employment involving height, weight, and heart disqualification. Persons who were disqualified under the prior standards for height, weight, and heart problems were re-examined pursuant to the new standards. Persons disqualified for reasons other than those mentioned above were not re-examined since those standards remain unchanged.

The medical problem from which your client suffers makes him unqualified for police service. Therefore, his 1973 disqualification remains in effect and he cannot be reconsidered for the position of police officer.

REPRODUCTION EXPENSES—DEPARTMENTAL RECORDS

(Superintendent of Police—R. F. F.—March 16, 1976)

This is in answer to your inquiry whether the Police Department may charge a fee for reproducing departmental records. You also inquired whether it would be necessary for the City Council to enact an ordinance authorizing such charges.

For certain records, state law expressly permits a fee to be charged to those wishing to receive a copy of public records. Section 13 of the Local Records Act (Ill. Rev. Stat. 1973 116, par. 43.113) requires the payment of a fee equal to the actual cost of reproducing copies plus a service charge of 15%. This section applies to public records which "have been reproduced by photography, microphotography or other reproduction on film." Thus, there is authority for the Police Department charging for making copies of microfilm records.

No statute or ordinance has been enacted setting fees for the reproduction of other records, nor does any law prohibit making such a charge. Documents kept by governmental agencies which are by law open to the public may, of course, be inspected without charge. However, if a member of the public wishes to have an agency duplicate a record for him as an extraordinary service, he may be required to pay the cost of such duplication. Accordingly, the Department of Police may charge for making copies in amounts equal to the costs of such services; such costs may include materials, labor, mailing and search fees. Your suggestion of \$ 5-10, if supported by departmental costs seems reasonable. No authorization by ordinance is necessary.

In summary, state statute authorizes the Department to charge for duplicating microfilm records. For reproducing other documents, the department may charge a fee equal to the cost of such service without prior express authorization by ordinance.

EVIDENCE FOR DISQUALIFICATION FOR CRIMINAL CONDUCT

(Chairman, Personnel Board—J. A. S.—March 10, 1977)

This letter is in response to the recent inquiry from the Personnel Board regarding the appeals of those candidates who have been disqualified by the Superintendent of Police after background investigations and whose arrest records have been expunged by the Circuit Court. It is our opinion that the expungment of these arrest records have no effect as to the disqualification of persons for criminal conduct.

Those persons disqualified for criminal conduct have not been disqualified due to an arrest record. Rather, the Superintendent has determined that sufficient evidence, independent from a mere arrest record, exists so that it can be shown, by a preponderance of the evidence, that the candidate did engage in conduct which disqualifies the candidate for police work. Because a candidates' arrest record is not the basis of the disqualification the expungment of the arrest

record has no effect as to the sufficiency of the evidence proving criminal conduct. Indeed, it is possible for the Superintendent to prove criminal conduct against a candidate in situations where no arrests are indicated against a candidate.

I hope this opinion will help the Board in their review of the evidence presented by the Superintendent to prove criminal conduct.

JURISDICTION OF THE POLICE BOARD

(Chairman, Police Board—M. J. W.—May 12, 1977)

Your letter addressed to William Quinlan, Corporation Counsel of the City of Chicago, has been referred to the undersigned for review and reply.

In your letter you state that the members of the Police Board, including Mr. Goodrich who is one of the original members of the Police Board, are under the impression that as Board Members, you have no jurisdiction over police records, police equipment and police buildings and you request an opinion as to what the Police Board's jurisdiction is.

Chapter 11-9 of the Municipal Code of the City of Chicago does provide:

"The Board shall have the custody and control of the offices, stations and other public buildings occupied by the police department or any division thereof, equipment, books, records and other property belonging to said department.

It shall through the Superintendent of Police, preserve the peace and secure good order and cleanliness within the city, and to that end, it shall enforce all laws, ordinances of the City and orders of the City Council and the Mayor."

this provision together with Chapter 11-6 which provides for example:

"Subject to the rules of the department and the instruction of the Board, said Superintendent shall have the power and duty (1) to administer the affairs of the department as its chief administrative officer; etc."

would indicate that the Police Board has broad authority over the Police Department. These ordinances were passed in March of 1960. The State Legislature passed in May, 1963 Chapter 24, par. 3-7-3.1 Illinois Revised Statutes which sets out the power and authority of the Police Board and which specifically provides:

"The board's power to adopt rules and regulations for the governance of the police department does not include authority to administer or direct the operations of the police department or the superintendent of police, except as provided in Section 10-1-18.1."

and par. 3-7-3.2 passed at the same time provides in relevant part:

"The superintendent shall be responsible for the general management and control of the police department and shall have full and complete authority to administer the department."

It is obvious that the Legislature greatly limited the power and jurisdiction of the Board and specifically denied it any authority to interfere in the administration and operations of the Police Department.

The city itself greatly limited the authority granted the Board in 1960 when in June 1961 it passed the following provision of Chapter 11-3.

"The Board's power to adopt rules and regulations for the governance of the police department does not include authority to administer or direct the operations of the police department or the Superintendent."

This ordinance having been passed at a later date would be the law where there was an inconsistency with an earlier ordinance.

Unfortunately during the course of passing new legislation and amending old legislation, ordinances and statutes which are not directly involved in the new or amended legislation may remain on the books though rendered ineffectual or at least ambiguous.

Please be informed that our office is taking measures in regard to Chapter 11 that would remove these antiquated, ineffectual and ambiguous ordinances as they relate to the Police Board, the Superintendent of Police and the Police Department.

ISSUANCE AND REVOCATION— PRESS CREDENTIALS

(*Acting Superintendent of Police—M. S.—
December 27, 1977*)

We are enclosing herewith proposed regulations which define various terms used in the Municipal Code of the City of Chicago regarding the issuance of press credentials. Said matter is now before Judge Will in the United States District Court wherein the provisions in the Ordinance are challenged constitutionally for vagueness. The attorneys for the plaintiffs have agreed that they will accept regulations defining various terms used in the Ordinance as a means of curing the alleged constitutional vagueness without the necessity of submitting an Amended Ordinance to the City Council. We would appreciate your immediate attention to this matter as we must appear before the Court on December 30, 1977.

The pertinent portions of the Ordinance and the regulations defining same are as follows:

Re: *New Solidarity et al. v. Rochford et al.*

193-7.2 . . . entitling the holder to cross police and fire lines . . . such press cards shall be issued only to those engaged in gathering, reporting, editing, or photographing current news events for newspapers, press associations, news reels and radio stations.

Regulation.

Entitling: The holder of a press card does not have an unlimited right to cross police and fire lines. Crossing may be limited on a "first come" basis if necessary to prevent chaos or disruption due to the number of press card holders seeking access at a particular time and place. Where in the opinion of the ranking officer in charge, the situation is inherently dangerous or the crossing of police and fire lines would interfere with police and fire functions, access could be denied totally to all press card holders or one or two press card holders may be permitted to cross as representatives of all press card holders (pool representative) of the various media.

Full Time: On the staff of the employing media and regularly engaged in these activities.

Current News Events: Occurrences or events present or taking place within a period of one week.

Newspapers, Press Associations, News Reels and Radio Stations: include all media which are engaged in the gathering and reporting of current news events (as defined) issued or presented at regular intervals to the general public or regularly providing information to other news media.

193-7.3 . . . full time reporter, editor, writer, photographer or broadcaster of spot news is of good moral character . . .

Spot News: events which are presently taking place.

Good moral character: Any person who has not been convicted of a felony or who has not been released from prison within the past 5 years for the commission of a felony. Any person who has not violated the provisions of this code and its regulation within the past year or whose press credentials were not revoked within the past year for good cause not inconsistent with these provisions in another jurisdiction within the past year.

193-7.4. . . . which committee shall . . . make recommendations to the superintendent of police.

Recommendations: Advice on the merits whether to issue press cards, however, the Superintendent or his designate shall have the final determination regarding all such applications and shall promptly notify each applicant of his decision in writing.

193-7.7: The Superintendent of police has the power to revoke any press card . . . duty . . . to immediately surrender . . .

Power to revoke: The power to revoke is limited to the definitions good moral character, and violations of sec. 193-7.1 through 193-7.8 of the Municipal Code and the regulations adopted pursuant thereto.

Duty . . . to immediately surrender: There must be an immediate surrender of the press card in question. The holder of said press card has a right to file a written appeal within seven days of his surrender of the card in question contesting the decision by serving such a request on the Superintendent or his designate. Upon the filing of such appeal, the Superintendent or his designate has twenty-one (21) days to issue a written grant or denial of the appeal, a copy of which must be sent to the holder and his employer.

REMOVAL OF PICKETING RESTRICTIONS

(District Commander—R. F. F.—April 5, 1978)

As you know, the above suit was filed on behalf of a pair of would-be picketers to enjoin the Chicago Police Department from enforcing a rule against certain kinds of picketing on the west side of Michigan Avenue near the Conrad Hilton and other hotels. To facilitate the end of the litigation at minimal expense and without any admission of liability on the part of any police officer or the City of Chicago, the City agreed to settle the law suit and to refrain from enforcing the rule in the future.

I am enclosing a copy of the settlement agreement and the court's order, which was entered pursuant to the agreement. Pursuant to the decree, the rule that was applied to the plaintiffs may no longer be enforced.

DEPARTMENT RETENTION OF ABANDONED AUTOMOBILES

(Superintendent of Police—R. F. F.—May 2, 1978)

This is in answer to a letter of inquiry concerning the manner of obtaining state title to abandoned automobiles. It appears that some automobiles being held in City auto pounds may be useful to the Police Department as under-cover vehicles. The Department wishes to obtain title to such abandoned vehicles for police purposes.

Chapter 4 of the Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 4-210 et seq.) governs the disposition of abandoned vehicles. The statute specifies the circumstances under which vehicles may be towed to the City auto pound and contains requirements for reporting such tows and attempting to identify the vehicle ownership. It is presumed that the Police Department has complied with these requirements.

Section 4-208 of the Vehicle Code provides the manner of the disposal of unclaimed vehicles. It requires a public sale under the Municipal Purchasing Act (Ill. Rev. Stat. 1975, ch. 24, par. 8-10-1). Thereafter, the Police Department is to issue a certificate of sale to the purchaser and such certificate of sale entitles the purchaser to a title to the vehicle. Section 4-212. The City of Chicago is entitled to receive the proceeds of such sale. Section 4-211.

By its literal terms, the statute does not expressly provide for the Chicago Police Department to retain possession of such automobiles. However, it is within the intent of such statute for the Police Department to retain possession of such abandoned automobiles as it deems necessary for assignments such as you describe.

The alternative to the Police Department's retaining possession of such abandoned automobiles is a circuitous and unnecessary procedure. To obtain similar vehicles following the literal terms of the statute, the Police Department would be required first to sell a vehicle it was interested in to a purchaser, then deposit the proceeds, and thereafter take the proceeds and purchase such a vehicle from the person who had purchased it from the Police Department or purchase such a vehicle on the open market. Although such a procedure complies with the letter of the statute, it is unnecessary complicated. The law does not require adherence to a vain or useless procedure.

Accordingly, it is sufficient if the Police Department, after following the appropriate reporting and tracing procedures required by statute, issues to itself a certificate of sale for the abandoned vehicles required for its under-cover assignments. Said certificate of sale should indicate that ownership is transferred to the City of Chicago in lieu of the sale and deposit of proceeds provided for in sections 4-208 and 4-211 of the Vehicle Code.

The above procedure follows the intent of the statute that the proceeds of sale be retained by the City. Here, the automobile itself is retained for City purposes in lieu of proceeds. There is no loss of income to the City; in fact, money might be considered to be saved because of a more efficient procedure.

If we may be of further assistance, please do not hesitate to ask.

REINSTATEMENT

(Superintendent of Police—M. J. K.—June 12, 1978)

On December 9, 1977 the Appellate Court of Illinois reversed the conviction of Sergeant John Toner who had been previously charged with and convicted of perjury. On February 2, 1978 the charges filed against Toner with the Police Board were withdrawn and Toner was reinstated to the department. On March 30, 1978 the Supreme Court of Illinois denied the State's Petition for leave to Appeal, thus ending the criminal case against Sergeant Toner.

Since the Police Board held Toner's case in abeyance pending the disposition of his criminal matter, pursuant to the request of his attorney, he was never formally discharged. Therefore, he now is entitled to all back pay and other benefits of his employment from the date of his original suspension.

AUTHORITY OF SPECIAL POLICE

(Chairman, Committee on Police, Fire, Personnel, Schools and Municipal Institutions—R. R.—October 19, 1978)

This letter is in response to your request for an interpretation of Chapter 173 of the Municipal Code of Chicago. Specifically you ask if it is the Corporation Counsel's interpretation of Chapter 173 that special police officers are granted police power without respect to a fixed or circumscribed place, structure or dwelling. As you know, Section 173-11 provides in part:

Special policemen shall possess the powers of regular police patrol at the places for which they are respectively appointed or *in the line of duty for which they are engaged*. [emphasis added]

Additionally, Section 73-3 provides, in part:

The superintendent of police shall have the power to appoint and swear in any number of special policemen to do special duty at any fixed place in the city, or *any of the necessary places for the protection of persons, passengers, and property being transported* in interstate or intrastate commerce within the city, at the expense and charge of the applicant. [emphasis added]

It is our conclusion that these two sections, and particularly the language therein emphasized above, do allow the superintendent of police to appoint special police without restriction to a fixed situs in those instances where the necessity of mobility is demonstrated by the nature of the duty. As you suggest, protection of property in transit, the security of persons, and other similar proper objectives could not be realistically achieved by appointments strictly limited to a fixed geographical point. We do not understand Chapter 173 of the Municipal Code to prohibit appointments broad enough to accomplish such objectives.

This is not to say, however, that the ordinance permits appointments of special policemen with authority to act throughout the city where an appointment designating a fixed location would be adequate to meet the needs of the employer. We believe that the intent of the ordinance is to limit the authority of special policemen as narrowly as can be done consonant with "the line of duty for which they are engaged." Thus, an appointment might properly include provision for a special policeman's exercise of authority in the line of specified

duty as an alternative to a specified place. However, such an officer's authority would exist only while he is actually engaged in performing that specified duty.

DELETION OF ARREST RECORD

(Superintendent of Police—P. M. S.—October 23, 1978)

In the above entitled matter nine plaintiffs are suing various police officers alleging they were wrongfully arrested, searched, fingerprinted, photographed and then released without being charged. The position of the defendant police officers is that although those events did occur and no contraband was located, they did in fact have *reasonable grounds* to arrest the defendants and their conduct was, therefore, proper. The relief prayed for by the plaintiffs was to have the record of the arrest in question deleted from the police records, attorney fees and monetary damages.

I was recently informed that the Plaintiffs would dismiss their lawsuit if the record of the arrest in question would be deleted from their police record. It is my understanding that the police department has a set procedure for deleting records of arrests when no criminal charges were filed following the arrest in appropriate circumstances.

After reviewing the files on this matter, the undersigned can see no disadvantage to the police department or law enforcement in general in deleting the arrest in question from the record of the plaintiffs. Each of them would still have a record of other arrests on file with the department.

It would be appreciated if you would review this matter and inform us if your department has any objection to disposing of the pending lawsuit on the basis indicated.

WEAPON RETENTION

(Superintendent of Police—M. J. H.—March 8, 1979)

Our office is currently representing police officers in various situations wherein an officer in his own defense was called upon to shoot an armed offender. In the Federal Court the individual has five years in which to file a lawsuit. Very often lawsuits are not filed until a long period of time elapsed from the date of the shooting. When lawsuits are not filed until some time after the shooting, we are finding that the weapon confiscated from the offender has been destroyed. The destruction of the weapon places us at a disadvantage at the trial in that we cannot exhibit the weapon to the jury.

Our office would recommend that in any situation where a civilian is injured by a police officer acting in defense of himself a "hold" be put upon any weapon recovered for five years.

Being able to produce the offender's weapon in court, we will be in a greatly improved posture for the defense of the officer.

HEARING TO DETERMINE PERFORMANCE CAPABILITY

(Secretary, Police Board—M. S.—July 25, 1979)

Your letter and accompanying demand for a hearing by attorney Denis M. Fleming, on behalf of Police Officer Don Johnson, has been submitted to the undersigned for review and reply.

In your letter, you request advice from our office as to what action the Police Board should take in regard to this demand. A review of the demand reveals that Doctor Carroll, Chief Police Surgeon, ordered Police Officer Don Johnson to apply for medical disability since in the opinion of the Psychiatric Board, Police Officer Don Johnson cannot perform the duties of a police officer. Police Officer Johnson challenges these findings of the Psychiatric Board by stating that his meetings with the Psychiatrists on three occasions were perfunctory and lasted no more than five to ten minutes. Police Officer Johnson refuses to apply for medical disability and demands that the Police Board grant him a hearing.

A review of the relevant ordinance in Chapter 11 of the Municipal Code of the City of Chicago and the previous statutes which governed the authority and powers of the Police Board reveal no authority or power of the Board to grant or hold such a hearing. In fact, such authority is expressly prohibited by Chapter 11, Section 11-3 of the Municipal Code and Chapter 24, Section 3-7-3.1 and 3-7-3.2 of the Illinois Revised Statutes.

Police Officer Don Johnson's demand should be directed, if at all, to the Superintendent of Police.

CONTINUATION OF FILM REVIEW

(Acting Superintendent of Police—D. P.—November 8, 1979)

The Corporation Counsel has asked me to respond to your letter dated September 18, 1979, in which you ask whether the Film Review Section could be eliminated from the Police Department's 1980 budget.

Chapter 155 of the Municipal Code requires that any person wishing to exhibit a motion picture in a place where the public is admitted first obtain a permit from the superintendent of police, unless the audience will be comprised of persons 18 years of age or older. The administrative procedure established by the ordinance requires that a Film Review Section view the film on behalf of the superintendent. The ordinance also creates a Motion Picture Appeal Board with a jurisdiction that extends to reviewing the initial decision. A practical reason for the bi-level procedure is that the Film Review Section reviews all films, whereas the Appeal Board sits only to examine the small number of films not approved.

Accordingly, it is our view that in the absence of a complete repeal of the City of Chicago motion picture review process, the motion picture ordinance and considerations of due process of law require that the annual appropriation ordinance fund a Film Review Section within the Chicago Police Department and that the employee positions be filled.

Section C. BOARD OF HEALTH

TREATMENT OF PRIVATE PATIENT
PROHIBITED

(Commissioner, Board of Health—F. G. S.—July 23, 1973)

Your recent letter addressed to Richard L. Curry, Corporation Counsel, has been referred to the undersigned for attention and reply. You enclosed with your letter a certification statement to be executed by Board of Health employees, certifying that services of the Board of Health shall be performed in accordance with Board of Health Programs and rendered only to patients eligible for services within these programs. The Certification further states that treatment of patients relating to private practice will not be carried out within the Board of Health facility and such treatment of private patients may subject the individual to immediate termination of employment. You request that we review the proposed statement and comment on it.

We have reviewed the certification statement, made several changes therein and are returning it to you for your further use, approved as to form and legality.

USE OF FACILITIES FOR NON-GOVERNMENTAL
ACTIVITIES

*(Assistant Commissioner, Board of Health—F. G. S.—
August 7, 1973)*

Your letter of July 31, 1973 addressed to Richard L. Curry, Corporation Counsel, together with the attached letter from Oglesby Paul, M. D., to Dr. Eric Oldberg, President of the Chicago Board of Health, has been referred to the undersigned for attention and reply.

You request an opinion with respect to the matter of donating the use of Board of Health facilities in the Civic Center by the Northwestern Memorial Hospital to conduct a "screening" program after normal working hours with their own personnel, and without cost to the Board of Health.

Please be advised that it is legally possible to permit the use of municipal facilities for non government activities. However, this authority granting permission for such use properly rests with the corporate authority of the municipality, i.e. the City Council.

It is therefore our recommendation that an appropriate agreement for such use be prepared by the Board of Health for execution by the Board of Health and the Northwestern Memorial Hospital and forwarded to this office for the preparation of an appropriate enabling ordinance and submission to the City for its consideration and adoption.

We would suggest that any agreement for the use of the Board of Health Facilities by Northwestern Memorial Hospital incorporate the attached hold harmless clause.

If we can be of any further assistance, please advise.

SANITATION INSPECTION REPORTS— PUBLIC RECORDS

(Commissioner, Board of Health—R. F. F.—March 7, 1974)

This is in reply to your letter of January 11, 1974, requesting our opinion as to whether the Board of Health is required to release sanitation inspection reports to the public.

It is the opinion of this office that the Board of Health is required to furnish these public records upon request. It is settled law in Illinois that documents are regarded as public records when they are *made under the mandate of statute or ordinance and official duty*. *Griffiths v. Sanitary District of Chicago*, 174 Ill. App. 100; *Tucker v. People*, 117 Ill. 88.

Inasmuch as these sanitation inspections and reports are required to be made by the Municipal Code of Chicago, sections 130-15.4, 130-21, 130-32.1, 130-39 and 130-40, they are made under the sanction of law and official duty. Therefore, it is our opinion that these reports constitute public records and should be made available to public inspection upon reasonable request.

CONSENT OF MINORS FOR TREATMENT

(Commissioner, Board of Health—M. L. R.—March 12, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding age requirements for a patient to authorize the Chicago Board of Health to perform examinations and treatment. Your letter poses a series of questions relating to the matter of consent by minors.

In the first instance, we call your attention to Chapter 91, Sections 18.1 through 18.5, Illinois Revised Statutes, 1971, the "Consent By Minors To Medical and Surgical Procedures and Counseling Act," which provides as follows:

"18.1 Legal effect.] § 1. The consent to the performance of a medical or surgical procedure by a physician licensed to practice medicine and surgery executed by a married person who is a minor, by a pregnant woman who is a minor, or by any person 18 years of age or older, is not voidable because of such minority, and, for such purpose, a married person who is a minor, a pregnant woman who is a minor, or any person 18 years of age or older, is deemed to have the same legal capacity to act and has the same powers and obligations as has a person of legal age."

"18.2 Surgery upon children—Consent by parents.] § 2. Any parent, including a parent who is a minor, may consent to the performance upon his or her child of a medical or surgical procedure by a physician licensed to practice medicine and surgery. The consent of a parent who is a minor shall not be voidable because of such minority, but, for such purpose, a parent who is a minor shall be deemed to have the same legal capacity to act and shall have the same powers and obligations as has a person of legal age."

"18.3 Situations where consent need not be obtained.] § 3. Where a hospital or a physician, licensed to practice medicine and surgery, renders emergency treatment or first aid to a minor, consent of the minor's parent or legal guardian need not be obtained if, in the sole opinion of the physi-

cian or hospital, the obtaining of consent is not feasible under the circumstances without adversely affecting the condition of such minor's health."

"18.4 Venereal disease—Drug use—Consent to treatment by minor.] § 4. Notwithstanding any other provision of law, a minor 12 years of age or older who may have come into contact with any venereal disease or suffers from the use of depressant or stimulant drugs, as defined in the Drug Abuse Control Act, or narcotic drugs, as defined in the Uniform Narcotic Drug Act, may give consent to the furnishing of medical care or counseling related to the diagnosis or treatment of such disease. Each incident of such venereal disease shall be reported to the State Department of Public Health or the local board of health in accordance with regulations adopted pursuant to statute or ordinance. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize medical care or counseling related to the diagnosis or treatment of such disease or drug or narcotic use. The consent of the minor shall be valid and binding as if the minor had achieved his or her majority. Such consent shall not be voidable, nor subject to later disaffirmance, because of minority."

"18.5 Notification of parents of minor treated for venereal disease or drug use.] § 5. Any physician who provides diagnosis or treatment or any licensed clinical psychologist or professionally trained social worker with a master's degree or any addiction aid or addiction specialist employed by the Department of Mental Health under the Illinois Drug Abuse Program or by units of local government or by agencies or organizations operating drug abuse, programs funded by the Federal Government or the State of Illinois who provides counseling to a minor patient who has come into contact with any venereal disease or suffers from the use of any drug or narcotic referred to in Section 4 of this Act may, but shall not be obligated to, inform the parent, parents, or guardian of any such minor as to the treatment given or needed."

In addition to the above it should be noted that Chapter 91, Section 18.7, the "Birth Control Services For Minors Act," reads as follows:

"18.7 Minors entitled to services and information.] § 1. Birth control services and information may be rendered by doctors licensed in Illinois to practice medicine in all of its branches to any minor:

1. Who is married; or
2. Who is a parent; or
3. Who is pregnant; or
4. Who has the consent of his parent or legal guardian; or
5. As to whom the failure to provide such services would create a serious health hazard; or
6. Who is referred for such services by a physician, clergyman or a planned parenthood agency.

From the above cited provisions of the State Statutes, we submit the following in answer to the specific questions raised in your letter:

1. With respect to your inquiry regarding what age a prenatal patient must be in order to authorize her examination, it is our opinion that regardless of age, she may legally consent to treatment under Section 18.1 of Chapter 91. Illinois Revised Statutes, 1971. The Act provides in this Section that such individual, even though a minor, has the same legal capacity to act as a person of legal age, if she is in fact pregnant.

2. You are correct in making the statement that a minor with venereal

disease may consent to treatment, if said minor is 12 years of age or older. The authority for this is found at Section 18.4 of the Act. However, the same is not the case with respect to patients seeking birth control services and information. A minor is entitled to such services, only if he or she meets one of the six qualifications set out in the "Birth Control Services For Minors Act" (Chapter 91, Section 18.7, Illinois Revised Statutes, 1971), i.e., (1.) is married; or (2) a parent; or (3) is pregnant; or 4) has consent of parent or guardian; or (5) if a failure to give such services would result in a serious health hazard; or (6) is referred by a physician, clergyman or planned parenthood agency.

3. Your next question concerns itself with whether or not a mother, regardless of age, may authorize examination and treatment of her child. Section 18.2 of Chapter 91 authorizes any parent to consent to the performance of medical treatment for his or her child. This includes a parent who is a minor.

4. When a problem arises regarding determination of who is a child's legal guardian, we would suggest that you require the prospective parties to present a certified copy of the Court's order indicating the appointment of such guardian.

5. Finally, in answer to your question of whether a patient may take a form home for the purpose of obtaining consent, it is our opinion that this procedure would comply with the aforementioned statutory provisions.

We trust this will provide you with the necessary information you require in resolving the problems submitted in your letter.

COMPENSATION FOR PERIOD OF "INACTIVE STATUS"

(Chicago Board of Health—R. L. C.—July 11, 1974)

I met again today with Dr. Stammler and his attorney, Thomas Sullivan, regarding the ongoing dispute relative to the Doctor's entitlement to salary and/or compensation for accrued sick leave from the date of the Board of Health Resolution placing him on "inactive status" to November 1, 1967, the date upon which he became a full-time employee of the Chicago Health Foundation.

I have reviewed the City's position as the same was expressed and is found in the minutes of the Board of Health meeting of July 15, 1967, in the minutes of the special meeting of the Board of Directors of the Chicago Health Foundation dated August 2, 1967, and in an assortment of other related press announcements and statements relative to Dr. Stammler's 1967 difficulties with the House Un-American Activities Committee and the charges emanating therefrom.

It is clear from this material that the City of Chicago's position regarding the charges against Dr. Stammler was one of total and complete "neutrality" regarding the merits of those charges. It was the City's position that Dr. Stammler should enjoy and be the beneficiary of the constitutional right to a presumption of innocence until the contrary was proved in a court of competent jurisdiction. In furtherance of this position of "neutrality," the City utilized the term "inactive status" to describe the relationship which the Doctor would have pending the outcome of his defense against the charges emanating from the House Un-American Activities Committee. In further recognition of the fact that "inactive status" was not the equivalent of "separation," "resignation" or "retirement," the City indicated publicly that Dr. Stammler's salary would be placed "in escrow" during the period of time he was on "inactive status."

On November 1, 1967 Dr. Stammmler became a full-time employee of the Chicago Health Foundation at a salary which was at all times equivalent to or in excess of that which he was entitled to in the position held in the Board of Health. He makes no claim for any salary or compensation subsequent to that date.

Dr. Stammmler has now been judicially vindicated of all of the charges initially emanating from the House Un-American Activities Committee. Since these charges alone were the reason for the action taken by the City, which action interrupted what was otherwise Dr. Stammmler's fruitful and mutually satisfactory employment relationship with the City of Chicago, I would advise that we now resolve this remaining residual matter in a fashion which is in harmony with the judicial determination of the charges. To do otherwise, and to precipitate litigation on this claim, would be for the City of Chicago to pick up the now discredited charges of the House Un-American Activities Committee, endorse them as valid notwithstanding the judicial determination to the contrary, and to press for a sanction apparently never contemplated at the time that "inactive status" was announced.

For these reasons, and as attorney for the Board, I suggest that the Board of Health authorize payment to Dr. Jeremiah Stammmler for salary from the date of the Board of Health Resolution placing him on "inactive status" to November 1, 1967, the date upon which he became a full-time employee of the Chicago Health Foundation. This candid and factually correct resolution of the problem is far more preferable than the suggested payment of compensation for 90 days of accumulated sick leave for which no precedent or legal justification can be established.

RESIDENTIAL CARE HOME DEFINED

*(Assistant Commissioner, Board of Health—
F. G. S.—October 25, 1974)*

Your letter of October 18, 1974, addressed to Richard L. Curry, Corporation Counsel, together with certain documents attached thereto relating to the establishment of an Alcoholic Treatment Center by the Lutheran Welfare Services of Illinois, has been referred to the undersigned for attention and reply.

In your letter you request an opinion of this Department as to whether an alcoholic treatment center as outlined in the attached document titled "Tentative Model For A Community (Non-Medical) Detoxification Program" could possibly come under the classification of a Residential Care Home as defined under Chapter 136.2 of the Municipal Code of Chicago, and would therefore come under the jurisdiction of the Chicago Board of Health.

Section 136.2-1 of the Municipal Code of Chicago defines a Residential Care (Half Way) Home as follows:

"Residential Care (Half-Way) Home—a private boarding home, institution, building, residence or other place, whether occupied for profit or not, which through its ownership or management provides residential care to three or more persons who are not related to the applicant or owner by blood or marriage."

The same section further defines "Residential Care" as follows:

"Residential Care—maintenance and oversight."

The same section further defines "Maintenance" and "Oversight" as follows:

"Maintenance—food, shelter and laundry.

"Oversight—general watchfulness and appropriate action to meet the total needs of residents, exclusive of nursing or personal care as defined in Chapter 136.1 "Oversight" shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of previous physical or mental disability or in the opinion of a licensed physician, are in need of residential care."

Finally, the same section defines "Resident" as follows:

"Resident—any person admitted to a residential care home. Such person, however, shall not be admitted or retained who is not independently mobile."

The document you enclosed which details the nature of the Detoxification Program provides among other things for:

1. A building which can house 25 to 30 persons.
2. A community kitchen and dining room area which will permit the preparation and serving of meals for the 25 to 30 persons housed in the facility.
3. Bathing and toilet facilities sufficient to serve the needs of the residents.
4. A supervisor of the Center and a staff of approximately 6 persons to provide 24 hour coverage for the center and its residents throughout the week, the staff to be responsible for the admission of people to the center, provision of care to the residents during the stay at the center, etc.

On the basis of our review of the proposed "Tentative Model For a Community (Non-Resident) Detoxification Program," it is our opinion that such a center if established would be an operation as defined by Section 136.2-1 and would come under the provisions of Chapter 136.2 of the Municipal Code of Chicago and would therefore have to comply with all the requirements of said Chapter.

We trust this provides you with the information you requested.

REIMBURSEMENT FOR REHABILITATION SERVICES

*(Chicago Alcoholic Treatment Center—G. S. L.—
October 13, 1977)*

You have asked our opinion regarding the propriety of entering into the above referred to agreement.

Chapters 21-60 through 21-61.1 of the Chicago Municipal Code mandates the Commission for the Rehabilitation of Persons to cooperate with state and federal agencies and to provide your services to the residents of Chicago, free of charge, if they are unable to pay for them. Further, the Commission is authorized by the Municipal Code to collect fees for your services where and when possible.

It is my understanding that the proposed agreement will place no additional burden upon your facilities. I have been informed by members of your staff that you are already providing the services required by the agreement; that the agreement will merely enable you to obtain up to \$100,000.00 in reim-

bursements from the State of Illinois, which you would otherwise not receive, for services you will provide in any case; that "subregion 10," referred to in the agreement, is entirely within the City of Chicago. If this is, in fact, the situation, I see no problem in entering into the agreement if you so choose.

However, I must emphasize that action and approval by the Commission for the Rehabilitation of Persons is required for entering into the agreement. Without such action and approval the agreement will not be valid.

Additionally, we were concerned with "Special Regional Provisions" 5-E wherein you would be obligated to continue to provide services pursuant to the agreement until the end of the fiscal year even though the total funding of \$100,000.00 had been exhausted. However, your staff has informed me that this would cause you no potential burden as you would be providing the services enumerated in the agreement in the normal course of your operations with or without the agreement and regardless of reimbursement by the State.

AUTOMATED BLOOD PRESSURE DEVICES

(President, Board of Health—R. R.—August 15, 1978)

This letter is in response to your request of June 28, 1978 for a review by the Law Department of Board of Health regulations pertaining to automated blood pressure measurement devices.

Our conclusion is that the regulations transmitted with your letter should be altered in several respects. First, the exact analyses to be required by paragraph I should be exactly specified. The phrase "detailed analysis of comparisons" now included in that paragraph is too vague to be enforced. Second, it may be advantageous to allow the local distributor to provide the certificate of these test results. The present requirement that the analysis must be supplied by the manufacturer may be more restrictive than is practicable. Third, the requirement of paragraph II that certain information be posted should include directions that the required data be printed in a specified minimum print size and so placed that it is conspicuous to users of the machine.

Finally, the regulation should probably include some minimum standards of accuracy below which continued use of the machine would be prohibited.

If I may be of assistance to your staff in drafting any provisions of the regulations please feel free to call upon me.

REGULATIONS REVISED— BLOOD PRESSURE DEVICES

(President, Board of Health—R. R.—September 18, 1978)

We have reviewed the regulations pertaining to automated blood pressure measurement devices redrafted by members of your staff subsequent to my discussion of the matter with Ms. Ausbrook and Messrs. Shireman and Thieda. Our conclusion is that the regulations as revised are in proper form.

In view of the fact that the present state of the art does not allow the rigorous definition of minimal standards for these machines we recognize that greater specificity cannot be achieved at this time. As a result, however, we believe that enforcement of Section I, particularly denials of approval of some machines, may be problematic. Our suggestion is that as more definite measuring standards and techniques become available they should be incorporated into the regulations.

RELEASE OF PATIENT RECORDS

(Deputy Commissioner, Department of Health—
G. S. L.—October 26, 1978)

This letter is in initial response to your letter of September 22, 1978, requesting the opinion of our office "regarding research undertaken by graduate students from Universities in cooperation with or under the approval of City of Chicago Departments/Services."

From a practical standpoint, initially, there are at least two problems. As you are already aware, there are numerous statutory and regulatory prohibitions concerning the release of any information contained in patients' records. While there is statutory authority for providing such information in the course of research projects conducted by the Illinois Department of Public Health, Illinois State Medical Society, allied medical societies and committees of accredited hospitals (Ill. Rev. Stat. Ch. 51, sec. 101 et seq.), there is no such authority for providing patient record information to University graduate students conducting independent research projects. Therefore, the first problem is the possible lack of authority, depending on circumstances, of the Department of Health to release patient information to such independent researchers conducting such studies. Further, in the event that any independent researcher utilized such information in an improper manner, it is conceivable that the City and its agents could be subject to an action for damages by a patient whose medical record information was so utilized. It is important to note that the Illinois Statutes provide for criminal sanctions for improper or unauthorized release of patient medical records.

The second problem rests with your practical ability to prohibit publication reflecting data gathered on Department of Health staff, services, *patients*, etc. Copy-right laws and contracts aside, it is conceivable that an independent researcher could irresponsibly arrange and disseminate such information in a manner that would invade the privacy and improperly harm members of your staff and particularly, patients of the Department of Health. While we may anticipate the professional responsibility of those recognized organizations that your Department has dealt with in the past, we cannot be as certain of the responsibility or good intentions of individuals conducting independent research projects.

Based on the foregoing, and because of the Department of Health's and our concern for the privacy of your patients, it would be our position to dissuade you from allowing independent researchers access to information contained in patients' records. Of course, the circumstances of each research project are different and they should be handled on a case by case basis, depending on the potential liabilities and needs of your Department. Therefore, if you have any questions or need any additional information in this regard, please feel free to contact our office.

LIABILITY RE: HEALTH SCREENING PROGRAM

(Deputy Commissioner, Department of Health—
B. A. G.—September 5, 1979)

This letter is written pursuant to your inquiry as to the Department of Health's responsibility in supplying the above referenced Association with a letter stipulating that said organization would have no liability in connection

with any tests administered, immunizations given or diagnoses reported during a Health Screening Awareness Program.

The Department of Health has no obligation or duty to supply such a letter. By supplying medical services, as you know, the Department is susceptible to suits. It would seem imprudent to assume sole responsibility for all aspects of the Health Screening Awareness Program.

The Corporation Counsel's Office would be pleased to assist you, should the Department of Health decide to issue the type of letter in question.

RAISING OF BEES

(Alderman—K. J. S.—September 6, 1979)

In reply to your letter of September 1, 1979 please be advised that the raising of bees in the City constitutes a nuisance and danger to health. Persons allergic to bee stings may suffer severe consequences when stung. Chapter 99 Sec. 6 of the Municipal Code of Chicago is used against persons who raise bees in the City.

Inform the police in your district to issue a violation citation or phone the Building Complaint Department at 744-3420.

I trust this legal recourse will resolve the problem for your community.

MALPRACTICE INSURANCE

*(Deputy Commissioner, Department of Health—
R. L. H.—December 6, 1979)*

We have reviewed the above cited letter agreement and find same both legal and in proper form. It is herewith returned to you.

We must call your attention, however, to an omission which could be costly to the City. It appears from our reading of the contract that it will be Institute personnel who will be treating patients at City Health facilities. Without some requirement that the City be added to the Institute's malpractice insurance policy, the City is liable for the acts and omissions of personnel not in its employ.

It would be our suggestion that this area be explored with a view towards requiring some insurance protection to the City. If, however, it is determined that the City can afford the possibility of liability with the availability of the specialized services being most important, we would have no objection to this policy decision.

Section D. MUNICIPAL TUBERCULOSIS SANITARIUM

AUTHORITY TO CHARGE FOR SERVICES UNRELATED TO TUBERCULOSIS

*(Superintendent, Municipal Tuberculosis Sanitarium—
A. H.—September 7, 1973)*

We have had under study your recent letter and suggestions concerning third party payment for services rendered to patients by the Municipal Tuberculosis Sanitarium for non-tuberculosis related ailments, injuries and conditions. You have stated that once accepted by the Sanitarium, there is a multiple range of required health care services rendered to patients which, although unrelated to tuberculosis, must nevertheless be administered by the institution, thereby requiring the Sanitarium to provide the same services as would a general hospital. You have asked whether the Sanitarium has any authority to charge for services rendered unrelated to medical or surgical treatment of tuberculosis.

As you are well aware, the Municipal Tuberculosis Sanitarium was established by referendum under the authority of the Glackin Act which was passed in 1908 and is now to be found in the Illinois Municipal Code (Ill. Rev. Stat. 1972 Supp. ch. 24, art. 11, div. 29). The creation of the Board of Directors, their responsibilities and authority, proceed directly from the Act, rather than by ordinance. Thus, under Sections 11-29-3 and 11-29-6 of the Act, as amended, the five directors of the Sanitarium are given the responsibility for adopting such by-laws, rules and regulations for their own guidance in carrying out the program for the care and treatment of persons afflicted with tuberculosis and for the operation of the Sanitarium with its branches, dispensaries, auxiliary institutions and activities. (Ill. Rev. Stat. 1972 Supp. ch. 24, pars. 11-29-3, 11-29-6). To support the functions of the Municipal Tuberculosis Sanitarium, the corporate authorities are authorized to levy an annual tax on all taxable property within the municipality, to be levied and collected with the general taxes of the City and to be known as the Tuberculosis Sanitarium Fund and to appropriate from said Fund such sums of money as are deemed necessary "... to defray all necessary expenses and liabilities in carrying out the program for the care and treatment of persons afflicted with tuberculosis" (Ill. Rev. Stat. 1972 Supp. ch. 24, par. 11-29-1). Persons afflicted with tuberculosis for the purpose of the Act means any individual who is diagnosed as suffering from clinical tuberculosis or is suspected of suffering from clinical tuberculosis and for whom hospitalization is deemed necessary to establish the diagnosis (Ill. Rev. Stat. 1972 Supp. ch. par. 11-29-8.2). An examination of these and other sections of the Act reveals that its primary intent is to provide a place where such a contagious disease as tuberculosis may be treated on a specialized basis.

Although the Act provides that "every sanitarium board established under this Act shall provide sanitarium care and clinical follow-up services free for the benefit of the inhabitants of the city or village which established it, if they are afflicted with tuberculosis" (Ill. Rev. Stat. 1972 Supp. ch. 24, par. 11-29-8) in our opinion, the law does not require that non-tubercular afflictions, injuries or conditions must also be treated by the sanitarium free of charge.

It thus appears that where non-tubercular associated services are rendered for the care and treatment of persons who are otherwise afflicted with tuberculosis, the non-tuberculous aspect of such services and treatment are susceptible

to a reasonable charge not less than the actual cost of providing such care and treatment. It is our further opinion that these charges may be made to patients who are financially able to pay, or to third party payers, which include Medicaid, insurance, Medicare or welfare payments. These charges may be established through the adoption by the Board of such by-laws, rules and regulations as are necessary for that purpose. (Ill. Rev. Stat. 1972 Supp. ch. 24, par. 11-29-6). This will not only reduce the tax burden of the local taxpayers, but will also place the Sanitarium in the same financial position as other general hospitals when rendering services similar to those rendered by such institutions which now take advantage of third party payment benefits generally available to the public.

BOARD OF DIRECTORS, ROLE IN PHASE-OUT

*(Board of Directors, Municipal Tuberculosis Sanitarium—
R. L. C.—October 7, 1974)*

By letter of September 24, 1974, the General Superintendent of the Municipal Tuberculosis Sanitarium requests an opinion relative to the "legal responsibilities of the Board in the planned phase-out of the facility by January 1, 1975."

All liabilities of the Board of Directors will cease upon the concurrence by the City Council of a resolution adopted by the Board which recommends discontinuance of the programs for which the Board was originally created.

As in the past, the Department of Law will continue to assume the defense of any and all claims emanating from the functions carried on at the Municipal Tuberculosis Sanitarium. Outstanding claims and litigation which exist as of the date of discontinuance will continue to receive the attention of this Department and any judgment which may result therefrom will, as in the past, be satisfied from the Judgment Tax Fund of the City.

Litigation which may be filed subsequent to the discontinuation of the Sanitarium will similarly receive the attention of this office and the Directors will incur no liability by reason of their determination to cease operations.

In order to properly meet and legally dispose of the formalities of discontinuance, I have attached a suggested draft, the language of which should, in the main, be incorporated in any resolution on this subject which may be passed by the Board as an expression of its determination to discontinue.

COMPENSATORY PAYMENTS FOR EMPLOYEE INJURIES

(Budget Director—P. M. S.—October 7, 1975)

We are in receipt of your communication with respect to Helen V. Vedral, and the same has been assigned to the undersigned for consideration and response. Your communication requests an opinion from our office as to whether or not the City of Chicago should commence paying the award Ms. Vedral obtained from the Illinois Industrial Commission, in 1976, when there will be no Municipal Tuberculosis Sanitarium fund available to pay this continuing award. Your communication further points out that assets of the Municipal Tuberculosis Sanitarium will be transferred to the Corporate Fund of the City of Chicago upon its discontinuance.

The Municipal Tuberculosis Sanitarium was created pursuant to the legislative grant of authority contained in Chapter 24, Section 11-29 of the Illinois Revised Statutes. Sub-section 11-29-6, thereof, provides in essence that employees of the Municipal Tuberculosis Sanitarium shall be deemed employees of the City of Chicago. Also in the case before the Industrial Commission the award was entered against "City of Chicago, Municipal Tuberculosis Sanitarium," which indicates to the undersigned that the City of Chicago could readily be deemed to have been a party to that action.

There is really no question that Ms. Vedral is entitled to receive payment of her award. Based upon the facts noted above, it is our opinion that the City of Chicago should commence paying this award when the Municipal Tuberculosis Sanitarium will no longer be able to do so because of its discontinuance.

Section E. OTHER DEPARTMENTS AND OFFICERS

SUBPOENA OF CITY COMPTROLLER

*(Hearing Examiner, Illinois Commerce Commission—
B. R.—December 24, 1973)*

This letter is written in response to the letter of Attorney Gale L. Marcus which was dated December 4, 1973. Mr. Marcus' letter was in reply to our previous letter dated November 28, 1973. In his letter Attorney Marcus does not deny that a Stipulation of Facts has been agreed to between Mr. James R. Bryant, Jr. and himself as attorneys for Illinois Bell Telephone Company and Marilyn Adler. Further, he does not dispute our understanding that he intends to amend his complaint in this cause.

We cannot understand from a reading of Mr. Marcus' letter of December 4 why it is necessary to ascertain certain facts from City Comptroller Otto Loser beyond those agreed to in the Stipulation of Facts. It would seem to us that Mr. Marcus intends to engage in a fishing expedition at the expense of Mr. Loser which, in our opinion, is prohibited by the constitutional provisions of unreasonable searches and seizures.

Our objections to the issuance of a subpoena for Mr. Otto Loser are as follows:

1. The Illinois Commerce Commission does not have the authority, under the Public Utilities Act, to command by subpoena the presence of witnesses who are not connected with public utility business or activities, especially appointed officers of municipal corporations.
2. The Petition of the subpoena of Otto Loser fails to contain reasons sufficient to show the relevancy of this testimony to the issues raised in the complaint; the questions to be asked of Mr. Loser have not been specified and the City of Chicago and the Commission have no reason to believe that Mr. Loser's testimony will be germane to the issues.
3. The subpoena asks that Mr. Loser be required to testify as to his interpretation and construction of a municipal ordinance of the City of Chicago. It is the function of the Courts and not of Mr. Loser or of the

Commission to construe municipal ordinances. The Commission has not and cannot be delegated authority from the Illinois State Legislature to determine the law.

City of Chicago vs. Daniel A. Slater, et al 14 Ill. App. 3d 589, 590-91 (October 18, 1973)

We would ask that the Petition for the subpoena of Otto Loser be denied. If necessary, we are prepared to argue this matter before the full Commission. Kindly bring this letter to the attention of the Commission.

DESTRUCTION OF MUNICIPAL RECORDS

(Acting City Comptroller—M. L. R.—April 2, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding the number of years required to maintain and store the following records in your warehouse: payroll registers (1875-1974), municipal bonds (1930-1974), savingsbond deductions (1962-1974), and contracts (1908-1974).

In 1961 the General Assembly enacted the "Local Records Act" which provides for the creation of a "Local Records Commission" at Section 6 (See Ill. Rev. Stat., 1973, Ch. 116, Sections 43.101-43.114). For Cook County and the City of Chicago, this Commission consists of the President of the Cook County Board of Commissioners, the Mayor of the City of Chicago, the State's Attorney of Cook County, the Cook County Comptroller, the Illinois State Archivist (who is the Secretary of State) and the Illinois State Historian. The President of the County Board is the Chairman of the Local Records Commission.

Although the Act does not set out the procedure for the destruction of county and municipal records, Section 7 specifies the following powers given to the Local Records Commission:

"Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

"The Commission shall issue regulations which shall be binding on all such officers. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of public records proposed for disposal; procedures for the physical destruction or other disposition of such public records; and standards for the reproduction of such public records by photography or microphotographic processes. . . ."

We have enclosed for your benefit a copy of the regulations issued by the Local Records Commission of Cook County, Illinois pursuant to Section 7 of the Act (July, 1973). Under the circumstances presented, you should submit to the Local Records Commission, "lists or schedules of public records . . . that are not needed in the transaction of public business and that do not have sufficient administrative, legal or fiscal value to warrant their further preservation." The Commission will then determine whether the records stored in your warehouse "have no administrative, legal, research or historical value and should be destroyed or otherwise disposed of," as provided for in Section 10 of the Act.

We trust this will provide you with the necessary information you require in resolving the inquiry submitted in your letter.

DISPOSAL OF LIQUOR LICENSE APPLICATIONS

(Deputy Mayor—M. L. R.—May 10, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding the required period of time necessary to retain liquor license applications in the records of the Department of Revenue.

We have enclosed for your information a copy of an opinion sent from this office to Acting City Comptroller, Clark Burrus, dated April 2, 1974, responding to an inquiry regarding records retention. As noted in this opinion, the Local Records Commission of Cook County was created pursuant to the "Local Records Act," Chapter 116, Sections 43.101-43.114, Illinois Revised Statutes 1973.

Also enclosed is a copy of the "Regulations of the Local Records Commission of Cook County, Illinois," wherein the procedures for destruction of public records by local governmental agencies are discussed. It is this Commission's duty to determine what records no longer have administrative, legal or fiscal value. We would suggest that the Department of Revenue submit to the Commission a list or schedule of the license applications it no longer wishes to retain. The procedures for compiling and submitting lists and schedules of records for disposal is thoroughly outlined in the regulations of the Commission.

REQUIREMENTS FOR APPOINTMENT— BOARD OF EDUCATION

*(Assistant Professor of Law, DePaul University College
of Law—R. L. C.—May 15, 1974)*

Your letter to Mayor Richard J. Daley has been referred to me for reply.

Chapter 122, Par. 34-4, of the Illinois Revised Statutes concerning eligibility for appointment to the Board of Education was amended at the Fifth Special Session of the Illinois General Assembly by Public Act 78-1, effective November 29, 1973.

This amendment removed the requirement that a person be at least 30 years of age and be a resident of the City for at least 5 years immediately preceding his appointment. The present law merely requires that an individual be a registered voter, as provided in the Election Code, and shall have been a resident of the City for at least 3 years immediately preceding his appointment. This amendment, of course, establishes the present law of Illinois regarding eligibility for appointment to the Board of Education.

This matter will also be referred to the Mayor's Advisory Commission. Thank you for your interest and your continuing effort to improve the quality of education in Chicago.

STORAGE OF RECORDS

*(Director, Fire Prevention Bureau—M. J. P.—
June 24, 1974)*

Your recent letter to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response.

In your letter, you request an opinion as to the limitation date for storage of and maintenance of Fire Prevention Bureau files and records.

In 1961 the General Assembly enacted the "Local Records Act" which provides for the creation of a "Local Records Commission" at Section 6 (See Ill. Rev. Stat., 1973, Ch. 116, Sections 43.101-43.114). For Cook County and the City of Chicago, this Commission consists of the President of the Cook County Board of Commissioners, the Mayor of the City of Chicago, the State's Attorney of Cook County, the Cook County Comptroller, the Illinois State Archivist (who is the Secretary of State) and the Illinois State Historian. The President of the County Board is the Chairman of the Local Records Commission.

Although the Act does not set out the procedure for the destruction of county and municipal records, Section 7 specifies the following powers given to the Local Records Commission:

"Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.

"The Commission shall issue regulations which shall be binding on all such officers. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of public records proposed for disposal; procedures for the physical destruction or other disposition of such public records; and standards for the reproduction of such public records by photography or microphotographic processes. . . ."

We have enclosed for your benefit a copy of the regulations issued by the Local Records Commission of Cook County, Illinois, pursuant to Section 7 of the Act (July, 1973). Under the circumstances presented, you should submit to the Local Records Commission, "lists or schedules of public records . . . that are not needed in the transaction of public business and that do not have sufficient administrative, legal or fiscal value to warrant their further preservation." The Commission will then determine whether the records stored in your warehouse "have no administrative, legal, research or historical value and should be destroyed or otherwise disposed of," as provided for in Section 10 of the Act.

We trust this will provide you with the necessary information you require in resolving the inquiry submitted in your letter.

SAFETY CLEARANCE ACETYLENE GAS CYLINDERS

*(Director, Bureau of Fire Prevention—
F. G. S.—October 22, 1974)*

Your letter of October 11, 1974, addressed to Richard L. Curry, Corporation Counsel together with the attached letter from the Liquid Carbonic Corporation has been referred to the undersigned for attention and reply.

In your letter your request for an opinion as to whether or not the provisions of Section 60-13 of the Municipal Code requiring a safety clearance as defined in Section 60-8 of the Municipal Code applies to the proposed one story masonry and steel building to be constructed for Liquid Carbonic Corporation at 121st Street and Doty Avenue. On the basis of your letter and my telephone conversation with you and a conference with Mr. Matthews of Liquid Carbonic it is my understanding that there will be stored on the premises, acetylene gas in acetone in cylinders, which is an industry wide acceptable practice for stable

and safe storage of acetylene gas. Furthermore, it is my understanding that this is not acetylene gas in its gaseous state at a pressure of more than fifteen pounds per square inch. Therefore it is our opinion that the safety clearance of two hundred and fifty feet is not applicable insofar as the storage of the acetylene gas cylinders is concerned.

We are also advised that the other specialty gases which might be considered fume or explosion hazard gases are not manufactured or stored on the premises for resale in their pure form, but are in fact on the premises for the purpose of transfilling and mixing for medical, laboratory and instrument purposes, some of which contain hydrocarbons below analyzed flammable limits. It is our further understanding that the quantity of any single fume or explosion hazard gas will not exceed twenty-five hundred cubic feet during any twenty-four hour period. We are also advised that the building will have a special flammable dock with two sides open and two other sides to have 4 hour rated walls and doors and a gravity vented roof to completely segregate all cylinders containing the acetylene gas and the other fume and explosion hazard gas.

It is our further opinion that the safety clearance of two hundred and fifty feet is not applicable insofar as the other specialty gases are concerned.

Therefore, based on the facts submitted to us it is our opinion that the provisions of Section 60-13 of the Municipal Code requiring a safety clearance as defined in Section 60-8 of the Municipal Code do not apply to the building to be constructed by Liquid Carbonic Corporation.

COMPENSATION FOR LEGAL SERVICES

*(Committee Chairman, Mt. Vernon—Washington Heights
Community Organization—M. J. P.—October 25, 1974)*

I received your letter of October 18, 1974. I wish to thank you and your organization for the cooperation and sense of citizenship which you have so clearly shown. I am very grateful for your statement of appreciation for my work in the above cited matter.

I am employed by the City of Chicago as an Assistant Corporation Counsel. As such, I am compensated for my legal work by the City. Therefore, I am returning your check in the amount of Fifty (\$50.00) Dollars. Being able to perform my duties well for the citizens of Chicago is the greatest reward I can receive from my job.

COMPREHENSIVE REPORT— DEPARTMENTAL ACTIVITIES

*(Better Government Association—W. R. Q.—
August 11, 1975)*

Several department heads of the City of Chicago have forwarded to this office for consideration identical letters dated July 28, 1975 over your signature. The letters request that each of the department heads "issue a written report of activities of [the] department" and "transmit copies of such reports to the Municipal Reference Library."

Pursuant to Section 25-23 of the Municipal Code of Chicago each department, in the past, prepared a costly printed and bound copy of a report. Be-

cause of the scheduling necessary for printing and binding of such reports they were seldom timely.

As a result Mayor Richard J. Daley issued an executive order in an effort to implement the Code in a rational way so as to minimize the expense of reporting while assuring the availability of information. Thus the order provides for a comprehensive report incorporating all department activities. We believe this to be a positive, permissible interpretation of Section 25-23. Accordingly, since that time, information has regularly and continuously been supplied by department heads to the City Budget Director, all of which information, is available in that office. The information has also been compiled on an annual basis in a "Summary of Departmental Activities and Programs."

Additionally, the Mayor, in behalf of all departments, reports annually to the Council in connection with the preparation of the Appropriations Ordinance. Each department head also reports on their respective departments in public hearings before the Finance Committee. Furthermore, the Mayor periodically reports publicly to the community on the operations of City government. Here, then, are additional sources of information with respect to City operations.

The annual "Summary of Departmental Activities and Programs" for 1973 and 1974 are available.

Therefore, it is the opinion of this office that the executive order of 1973 was a permissible implementation of Section 25-23 within the authority of the Mayor. By adopting the above format the City eliminates the high cost of separate printing and binding of reports, and coordinates all departments for the entire City while continuing to make information more currently available to the public.

LEGAL EXTERN RESPONSIBILITIES

(Associate Dean, DePaul University College of Law—

F. G. S.—November 26, 1975)

I am in receipt of your letter of October 28, 1975. Having reviewed your program for the granting of extern credit, I am pleased to submit the following proposal which defines the positions of Maureen McGann and James Ryan as Law Clerks in this Division.

1. Both students have had their 711 licenses since July, 1975 and have been using said licenses under my supervision since that time. The nature of their responsibilities dictates that they work a minimum of 15 hours per week which would total over 225 hours per semester.
2. The responsibilities of these Law Clerks include, but are not necessarily limited to, the following tasks:
 - a. Preparing cases for return date, *i.e.*, drafting complaints, preparing party sheets after searching title, preparing summonses and sending same out for service and, under supervision, representing the City in court on said return date of the case.
 - b. Writing Replies to Answers of Defendants, writing briefs in support of the City's position on urban housing issues and, under supervision, going to trial on the merits of the City's complaint.
 - c. Under supervision, consulting with tenants, landlords, community groups and other interested persons about individual cases.

Our office prides itself in the wide range of legal experience which we are able to provide for our Law clerks.

Hoping that this proposal meets your educational objectives, I remain,

**BOND REQUIREMENT—
FIRE PROTECTION SERVICE OUTSIDE CITY**

*(Commissioner, Fire Department—
F. H. K.—January 20, 1976)*

We are in receipt of your recent letter regarding the apparent refusal of the Clearing Industrial District to post a bond covering fire protection for services outside the city limits as in former years. You request advice as to the action to be taken to secure the required bonds.

This will confirm our telephone conversation of yesterday that we see no objection to your department sending notices to the individual property owners that in order for them to obtain fire protection by the City of Chicago they must furnish individual indemnity bonds in the manner provided by Section 12-49.1 of the Municipal Code.

**STATE FACILITIES—SUBJECT TO
MUNICIPAL FIRE REGULATION**

*(Bureau of Fire Prevention—R. F. F.—
April 29, 1974)*

Your recent letter to Richard L. Curry, Corporation Counsel, requests an evaluation of the position expressed in an attached letter from Mr. James P. Martin, legal counsel, representing the Board of Trustees of the University of Illinois. The Board of Trustees contend that inasmuch as the Medical Center Campus (District) of the University of Illinois is an agency of the State of Illinois, it is not subject to the fire ordinances of the City of Chicago, notwithstanding the fact that the District lies within the boundaries of the City. The specific municipal ordinances in question deal with fire prevention and safety regulations.

We believe the contention of the Board is erroneous; the District is subject to the fire ordinances of the City of Chicago.

This office has had occasion to comment on a situation similar to that presented here involving City inspection of buildings owned by the State of Illinois (22 Opinions of the Corporation Counsel 378). Noting there that the General Assembly had invested the City with broad police power to regulate building construction within the City, and observing further that this power had not been "withdrawn or reinvested in any other state agencies," we concluded not only that the City had the authority to enforce its building ordinance with respect to the state owned building in question, but also to collect fees for required inspections.

The reasoning in that opinion was based in large part upon *County of Cook v. City of Chicago*, 311 Ill. 234, 31 A.L.R. 442. The County contended there that since it was a subdivision and agency of the State, the City had no authority to enforce its ordinances against buildings constructed by the county. The Supreme Court overruled the contention and held that the county was obliged to comply

with the ordinances of the City in which the building was located. The Court held that while the county was an agency of the state, it was not correct to say that the county was part of the state in the exercise of the police power. As "an agency of the state [the county] is likewise a creature of the state vested with only the powers conferred upon it by the state." (*County of Cook* p. 246-247.) *C.f. City of Chicago v. Board of Education*, 246 Ill. App. 405.

This principle is recognized by one of the principal authorities on municipal corporation law, Prof. McQuillin, who states that municipal police powers "are applicable to state agencies, at least to the extent that the ordinances are reasonably necessary for the protection of the municipality's inhabitants." McQuillin, *Municipal Corporations*, section 24.55 (1969).

By specific grant, the legislature has given the City of Chicago the power to prevent the dangerous construction, and maintenance of buildings or structures within its municipal boundaries. Illinois Revised Statutes, 1971, chapter 24, section 11-8-1, et seq.

The University of Illinois is created by "An act to provide for the organization and maintenance of the University of Illinois," (chapter 144, paragraph 28, Ill. Rev. Stat. (1971)). The act gives the trustees of the University the general power "to provide for the requisite buildings, apparatus, and conveniences . . . as may be required to teach. . . ." However, nowhere in the act are the trustees given police powers, or, more specifically, the power to create fire ordinances at variance with those in the Municipal Code.

By virtue of a clear and specific grant of power by the state, municipalities are granted this police power to enact and enforce fire and building codes for the protection of the health, safety, and welfare of persons within their boundaries. In contrast, the general powers given to the trustees of the University of Illinois are for the provision of such buildings as may be required to teach, but no more. In the absence of such a grant to the University, the specific police powers given the municipality prevail and any construction within its boundaries is subject to ordinances and regulations promulgated pursuant to those powers.

Similarly, the Medical Center District, as a creature of the state created pursuant to "An act in relation to the establishment of a medical center district in the City of Chicago and for the control and management thereof," (chapter 91, paragraph 125, et seq. Ill. Rev. Stat. (1971)), has only those powers delegated to it by the state. Nowhere does the Act in question delegate to the District the power to create its own fire ordinances or any ordinances at variance with the Municipal Code; nor is there anywhere created an immunity granting the District independence of the Municipal Code.

Moreover, the powers delegated to the District are carefully circumscribed and the pre-emptive jurisdiction of the City of Chicago over the District expressly affirmed in Section 9 of the Medical Center District Act (ch. 91, par. 133, Ill. Rev. Stat. 1971), which specifically provides:

"This Act shall not be construed to limit the jurisdiction of the City of Chicago to territory outside the limits of the District nor to impair any power now possessed by or hereafter granted to the City of Chicago. . . ."

Accordingly, it is the opinion of this office that buildings within the District must conform to the fire ordinances of the Municipal Code of the City of Chicago.

OWNERS CONSENT TO LANDMARK DESIGNATION

*(Chairman, Commission on Chicago Historical and
Architectural Landmarks—R. F. F.—August 22, 1978)*

This is in answer to your letter of August 16, 1978 in which you state that the Commission on Chicago Historical and Architectural Landmarks has taken under consideration the question of whether it will designate the Theurer/Wrigley House located at 2466 North Lakeview Avenue as a Chicago Landmark. You further state, that, as required by ordinance, you have requested the owner's consent to such designation and asked the owner to respond no later than the Commission's next meeting, to be held September 11, 1978. You ask whether it is proper for the Commission to schedule a public hearing on the matter of designating this property a Chicago Landmark on September 15, 1978.

Nothing in the ordinance creating the Commission (Municipal Code of Chicago, Ch. 21, §§21-64 through 21-64.2) prohibits holding a hearing on this date. You should note that §21-64.1(d) makes the following prerequisites to holding a hearing:

1. Posting a sign containing notice of the hearing near the property for 15 days immediately preceding the hearing.
2. Publishing notice of the hearing in a newspaper.
3. Giving written notice to the property owner.

Since only four days intervene between the date of the Commission's regular monthly meeting and the date of the hearing, it would be wise to notify the owner even prior to September 11, that, should it decline to give consent, the hearing will be held September 15, 1978.

There is no legal impediment to beginning the process of publicizing the hearing prior to receiving notice from the owner whether it will accept or decline designation. In the present case, the owner has already filed a petition for writ of mandamus requesting the issuance of a demolition permit for the property. However, even should the owner consent to designation, nothing is lost and the hearing may be called off.

If you have any further questions, please do not hesitate to contact me.

LIBRARY HOLDOVER OF PREMISES AFTER LEASE EXPIRATION

*(Deputy Commissioner for Management Services—
R. F. F.—July 3, 1979)*

Your request for an opinion regarding the Chicago Public Library's rights and duties as a tenant of the premises located at 7336-38 West Addison Street, in the absence of a signed lease and after expiration of the original lease, has been turned over to the undersigned for a reply.

As a general rule of law, a landlord makes an election to extend the tenancy under the original lease terms by accepting payment of rent for several months exceeding expiration of the lease. *Evans v. Schwartz*, 211 Ill. App. 573 (1918). However, where a tenant continues in possession after the expiration of the lease with the understanding between the parties that the holding over shall not operate as a renewal of the lease, the tenant has no enforceable rights based

upon the original lease terms. Additionally, where a landlord notifies his tenant before the expiration of the lease that if the tenant remains it must be on different terms, and those different terms are specifically stated, the holding over by the tenant will be treated as subject to the original lease terms as amended by such notice.

Accordingly, in the absence of an agreement or notice to the contrary, the Chicago Public Library's holding over of the premises at 7336-38 West Addison after the expiration of the lease for said premises, and the landlord's continued acceptance of rents therefor, provides the Library with rights enforceable under the terms of the original lease.

LEASE FOR CHICAGO PUBLIC LIBRARY

*(Deputy Commissioner for Management Services, Chicago
Public Library—R. L. H.—October 4, 1979)*

Your recent letter requests our review and comments relative to the lease for the Mandel Building space and you specifically raise four items of concern. We also note that the lease attached to your letter has a number of other items questioned and we will comment on those items as well.

We understand the escalation charge clause to mean that the library agrees to pay 26% of the increased annual costs as additional rent. If, however, said percentage exceeds 7% of the previous year's rent, said 7% is the maximum payable. It is our opinion that the language as stated in the lease is clear.

We note that "*Lessor's judgment*" is the key phrase on heating and cooling and it is due to this nebulous reference that a question of a temperature/comfort range is raised. Although you make parenthetical reference to the City Code, the only reference in the City Code that would apply is the requirement of 68°F as a minimum temperature for offices pursuant to Section 96-267. There is no requirement on air-conditioning and, therefore, we would suggest leaving this clause as it is since it is no different than the prior lease and we can see no practical method of change.

We agree with your comments on the Liability Insurance and suggest that the landlord be so advised and this paragraph be stricken.

We understand your concern over having the electricity turned off if payment is not made within 10 days from billing when you know that payment cannot be physically made in such a short time. We do not see this as a practical problem, however, and especially since this same clause was present in your prior lease.

The foregoing answers the questions in your letter and also items 1, 2, 3 and 7 on the marked-up lease. We will now comment on item 5 (two items), 6 and 8.

The two items numbered 5 relate to rights reserved in the landlord which clearly conflict with the City of Chicago policy and current library procedures. Paragraphs 4(c) and 4(h) should be stricken from the lease.

We see no problem with item 6 since it is also a repeat clause from the prior lease and the landlord is entitled to this protection.

Item 8 relates to Paragraph 11(e) of the lease and, although ~~not noted~~ thereon, also seems to apply to Paragraph 4(e) as well. Since the library does have

its own security system, it would seem logical that only the library would have keys for access to library premises. Both of the aforementioned paragraphs should be stricken from the lease.

We also note that Paragraph 15(b) of the lease provides that the Landlord has certain remedies if Tenant defaults under the lease and said default continues for 10 days after notice. The prior lease contains basically the same language except that default must continue for 30 days. We suggest that "30" be substituted for "10" in this paragraph.

When we were first requested to review the lease form some weeks ago, you advised us that the term was to be five years and although you initially wanted an 18 or 19 month cancellation privilege, you finally decided to forego same. We note that this lease is *not* a *five year* lease but is in fact a *six year* lease running from January 1, 1980 through December 31, 1985. We would suggest a term change unless a non-cancellable six year lease is what the library wants.

CONCURRENT PUBLIC AND PRIVATE SECTOR POSITIONS

(*Director, Chicago Council on Fine Arts—
E. H.—October 30, 1979*)

Your inquiry, addressed to the Corporation Counsel, concerning the possible question of a conflict of interest, has been referred to Deputy Corporation Counsel Daniel Pascale and myself for consideration and reply.

The question you ask is, can a person appointed director of the Chicago Council on Fine Arts continue to serve as a board member of non-profit institutions devoted to the fine arts, such as the Art Institute of Chicago and the Chicago Historical Society, to whom the Chicago Council on Fine Arts is empowered to make grants?

Section 3 of the Illinois Corrupt Practices Act (Ill. Rev. Stat. 1977, ch. 102, par. 2) provides:

"No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, either directly or indirectly, any money or other things of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made or procured in violation hereof is void."

Penalties for violation of the Act, which is denominated a class 4 felony include forfeiture of office, and imprisonment of from one to three years. The Act provides "the minimum term shall be one year in all cases." A fine may be imposed, not to exceed \$10,000.

However, as the Illinois Appellate Court declared in *Hollister v. North*, 50 Ill. App. 3d 56, at 59 (1977):

"The interest prohibited by the statute must be a pecuniary financial interest (*Panozzo v. City of Rockford*, (1940) 306 Ill. App.443; 28 N.E. 2d 748), although it need not be proprietary. *Buck v. Long*, 3 Ill. App.3d 691, 279 N.E. 2d 464."

In *Hollister* it was alleged that the existence of a marital relationship of a member of a board of education to a school teacher employed by the board created a conflict of interest. The court held that it did not.

In *Brown v. Kirk*, 33 Ill. App.3d (1975), the Appellate Court ruled that the Illinois law relating to conflicts of interest did not bar a tenant in a low-cost public housing project from serving as a commissioner of the housing authority. This result was contrary to the conclusion reached by the Supreme Court of Connecticut in *Housing Authority v. Dorsey*, 164 Conn. 247, 320 A.2d 820 (1973). The Illinois court cited the principle that statutes imposing disqualifications of public officers should be strictly construed, while those declaring qualifications should be construed liberally and every doubt or ambiguity must be resolved in favor of eligibility. On this basis, it concluded that tenants of public housing projects are not as such interested directly or indirectly in the letting of contracts for the performance of work upon which a commissioner of housing may be called upon to act or vote. *Brown v. Kirk*, like *Hollister v. North*, cited the *Panozzo* case.

Panozzo v. City of Rockford, 306 Ill. App. 443 (1940), was a suit brought by an unsuccessful bidder for a garbage removal contract to restrain the city from entering into a contract with the successful bidder. The complaint claimed that four aldermen were interested in the award of the contract. The Court held that the evidence did not support such a contention. It had not been shown that the alderman who was a junk dealer received any junk from the successful bidder, or that the alderman who was an insurance broker had any understanding about insurance with the successful bidder, or that the alderman who was an oil dealer received any credits from the successful bidder's purchase of gasoline at a certain garage. It also found that the fact that a relative of the fourth alderman was an employee of the successful bidder did not disqualify that alderman from voting to let the contract. The *Panozzo* court declared (at 456) the true rule to be:

"[T]he interest in a contract which disqualifies a public officer from executing such a contract in his official capacity, must be pecuniary."

Thus, it can be stated that being an unpaid board member of a not-for-profit cultural institution or organization does not disqualify a person from serving as a director of the Chicago Council on Fine Arts.

However, it would seem that a person who is simultaneously a salaried employee of a cultural agency applying for grants from the Chicago Council on Fine Arts would not be eligible.

In 1975 the Attorney General of Illinois, in Opinion No. 5-988, ruled that there was conflict of interest where a member of the Illinois Arts Council served as a paid consultant or paid employee of a not-for-profit corporation which received grant funds from that council, and that a contract making such a grant was void.

The opinion declared:

"I, therefore, am of the opinion that if a member of the Council serves without compensation on the board of trustees of a not-for-profit corporation, he has no pecuniary interest in a grant made by the Council to such not-for-profit corporation and there is no conflict of interest.

"Your second question in this series is whether there is a conflict of interest when a member of the Council serves without compensation on the board of trustees of a not-for-profit corporation which receives funds from the Federal government which pass through the Illinois Arts Council. As discussed above, there is no conflict of interest because the members of the Council has no pecuniary interest in the funds which pass through the Council."

Since the positions you hold on the board of diverse cultural institutions are apparently unremunerated in pecuniary form, it appears that, based on the foregoing, there will be no conflict of interest in your continuing to serve in such capacities, even though the Chicago Council on Fine Arts may make grants to one or more of these institutions.

CHAPTER II—RIGHTS AND DUTIES OF CITY EMPLOYEES

Section A. CIVIL SERVICE

FEDERAL EMPLOYMENT PROGRAM PARTICIPANTS

(Acting City Comptroller—M. L. R.—April 11, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding the employment status of two Department of Labor funded groups known as N Y C (Neighborhood Youth Corps) and P E P (Public Employment Program). The inquiry directs itself to whether or not these groups, both paid directly by the City of Chicago, should be considered employees of the City of Chicago.

In your letter, the following information was provided with respect to the two groups in question:

"N.Y.C. Neighborhood Youth Corps) enrollees are between the ages of 16 and 21. They are admitted to the program with the underlying provision that they are either in school or contemplate returning to school in the near future. Most enrollees are paid approximately \$1.60 an hour for about 20 hours per week. (During the summer the enrollees may be able to participate up to 36 hours per week.)"

"The P. E. P. (Public Employment Program) is an outgrowth of the Emergency Employment Act designed to alleviate unemployed and underemployed problem. Eighteen years of age and older adults are hired as full-time employees and are not distinguishable from other city workers. This program should lead to full time city employment when openings arise. No additional participants are now being added to the program."

In an opinion written by this office on January 25, 1965 entitled "Employees Paid From Federal Grants" (Vol. 25, Opinions of the Corporation Counsel, pg. 119), a similar inquiry was answered dealing with federal grants awarded to the City of Chicago. The following was stated:

"As these employees are under the control and direction of the City of Chicago, by and through the Department heads which supervise the project on which they are employed, and as they are paid with City money, even though such money is reimbursed to the City from Federal Grants, and further, since these employees are classified as to grade and position by the Civil Service Commission and, with the exception of a few instances, their salaries are fixed according to such grade and rank, and because such employees, with the exception of a few, are carried on the payrolls of the City of Chicago, and paid by city check, we are, therefore, of the opinion that these employees are City employees. . . ."

This opinion included references to three earlier opinions of the Corporation Counsel. The first one cited was dated September 9, 1960, and held as follows:

"It is our opinion that they (Janitors and maids employed by the Conservation Board under the Hyde Park Kenwood Urban Renewal Plan) cannot

be classified as independent contractors for the reason that the Conservation Board retains supervision over the performance and execution of their work and it also retains the right to give orders to said janitors and maids from time to time, as in the opinion of the superintendent or manager of the building may deem necessary."

"In view of the above we take the position that the janitors and maids employed by the Conservation Board . . . must be classed as temporary city employees. . . ."

The second opinion cited was written on March 13, 1961. The following was held:

"Please be advised that notwithstanding the fact that the community renewal program will be partially sponsored by a Federal Grant, the employed in this program must be considered City employees and are subject to the provisions of the City Civil Service Act."

Finally, in an opinion written by this office on August 6, 1973, the following appears:

"We have been informed by Mr. Otto H. Loser, First Deputy Comptroller, that there are ten employees on payroll No. 2536 and that the entire payroll is charged to fund No. 613, which is reimbursed by the State Welfare Department, which in turn receives for distribution federal funds."

"It is our opinion that these employees, who are paid by the City, notwithstanding the fact that the City will be reimbursed as aforesaid, must be considered employees of the City of Chicago. . . ."

In light of the foregoing, we are of the opinion that the employees in question, namely, those who are participants in the Neighborhood Youth Corps and Public Employment Program, should be considered employees of the City of Chicago.

JOB PERFORMANCE EVALUATION

(General Superintendent, Municipal Tuberculosis Sanitarium—P. M. S.—June 3, 1974)

We are in receipt of your request for advice with respect to Mary Kelly a Public Health Nurse I. This matter has been assigned to the undersigned for consideration and response.

Our understanding of the facts in this matter are as follows: that this employee commenced her employment for the Municipal Tuberculosis Sanitarium in December of 1966; that her work performance did not meet your standards and that serious consideration was being given to terminate her employment when she was shot by a sniper in August of 1967 while in the field on an assignment; that she was off work for several months as a result of the injuries she sustained; that her performance did not substantially improve thereafter but due to this unfortunate incident no action was taken; that in June of 1971 while making a field call to an apartment in a large building she was robbed in an elevator by an unknown male and an attempted rape evidently also occurred; that she was again off work for several months; that since her return to work in 1971 there has been no substantial improvement in her performance of duties and her latest performance rating was below the grade of 70; and that although she has taken the civil service test for the position she is presently occupying she has not passed this test and does not have civil service status.

You desire an opinion from our office as to whether or not the occurrence of these unfortunate incidents prevent you from taking the necessary action to terminate her employment with the Municipal Tuberculosis Sanitarium because of the sub-standard manner in which she performs her duties.

You have evidently given the matter a great deal of consideration prior to contacting our office with respect to terminating her employment. It is our opinion that the occurrence of these regrettable incidents clearly do not have the effect of granting to her continuous employment regardless of the manner in which she performs her duties. In view of the fact that she is not a civil service employee it is not necessary for you to file charges against her before the Civil Service Commission in order to terminate her employment.

It would therefore be our suggestion that the best manner to handle this situation would simply be to inform her by letter that as of a certain date her services with the Municipal Tuberculosis Sanitarium will no longer be needed.

RESIDENCE REQUIREMENT—EVIDENCE FOR CIVIL SERVICE CHARGES

(Fire Commissioner—P. M. S.—July 18, 1974)

We are in receipt of your requests for assistance in the preparation of civil service charges against twelve members of your department for not being residents of the City of Chicago as required by departmental rules and the Municipal Code of Chicago and the same has been assigned to the undersigned for consideration and response.

Accompanying these requests are statements your department took of these men with respect to their residence. It is our understanding that these statements constitute the basis relied upon by your Department to sustain the charges. We feel that in approximately half of the cases the men made sufficient admissions in their statements to warrant filing charges against them with a reasonable expectation of sustaining the charges.

It is our opinion, however, that it will be necessary to obtain additional evidence against the remaining men prior to filing civil service charges against them. With this in mind and also in view of the fact that your department evidently will be sending our office additional cases of this nature, we feel it would be advantageous to have a meeting with those members of your department in charge of this assignment in order to discuss the amount and type of evidence necessary to prevail on the charges and how this evidence might be obtained.

JOB APPLICATION REQUIREMENT REGARDING CONVICTIONS

*(Director-Field Operations—Illinois Fair Employment
Practices Commission—M. J. P.—July 2, 1974)*

We hereby acknowledge receipt of the charge filed by James Holmes, alleging unfair employment practices, committed by the Police Department of the City of Chicago. Please consider this communication as our response to said charge as provided for in your rules.

The Police Department of the City of Chicago denies that there is now or

ever has been any discrimination against the complainant, James Holmes, on the basis of his arrest record or on any other basis.

The Illinois Fair Employment Practice Act (Act) was amended, effective September 17, 1971, by Senate Bill No. 1085, to provide that *it is an unfair employment practice* (and thus a violation of the Act) *for any employer, employment agency or labor organization "to inquire on a written application whether a job applicant has ever been arrested."*

We are enclosing a copy of the written application which the complainant, James Holmes, submitted to the Police Department. None of the questions on the application inquire about his arrest record. However, Question Number 26 does inquire about convictions. The language of the Act clearly forbids inquiries on "written applications" about an applicant's arrest record but not about his convictions.

For the reasons stated above, we respectfully request that your Commission enter an order dismissing the charge as well as ordering that no complaint be issued against the Police Department of the City of Chicago.

REINSTATEMENT AFTER LEAVE OF ABSENCE

*(Director, Field Operations, Illinois Fair Employment Practice
Commission—M. J. P.—July 30, 1974)*

We hereby acknowledge receipt of the charge filed by Sylvia Jones, alleging unfair employment practices committed by the City of Chicago, Police Data Center. Please consider this communication as our response to said charge as provided for in your rules.

The City of Chicago, Police Data Center, denies that there is now or ever has been any discrimination against the complainant, Sylvia Jones, on the basis of her race or on any other basis.

Ms. Jones, a Civil Service Senior Keypunch Operator, applied for, and was granted a leave of absence on September, 28, 1973 for a period not to exceed one year. Approximately, one week prior to her reinstatement on the Civil Service list for Senior Keypunch Operator, such date of reinstatement being March 28, 1974, Ms. Jones visited the Chicago Data-center requesting reinstatement to her former position on the first shift. At that time Ms. Jones was offered the same position on the second shift by her supervisors, Mr. William Bernardo, chief Supervisor of Data Preparation and Mrs. Juliette Morgan, Shift Supervisor of Data Preparation. Ms. Jones refused to accept this offer of employment on the second shift for reasons personal to herself. Ms. Jones was not offered a position on the first shift since at that time and also at the present time, there is no need for a Senior Keypunch Operator. At the time of Ms. Jones return and at the present no Temporary Appointee Senior Keypunch Operators are working during the first shift.

It is clear from the facts that Ms. Jones was not given a position on the first shift, as she requested, because there was no need then or now for a Senior Keypunch Operator on that shift. However, Ms. Jones was offered a position on the second shift and said position is still available to her.

For the reasons stated above, we respectfully request that your Commission enter an order dismissing the charge as well as ordering that no complaint be issued against the City of Chicago, Police Data Center.

COMPENSATORY TIME AND UNUSED VACATION DAYS

*(Chairman, Board of Election Commissioners—
P. M. S.—August 26, 1974)*

We are in receipt of your communication with respect to an employee who recently ceased working for the Board of Election Commissioners and the same has been assigned to the undersigned for consideration and response.

Our understanding of the facts in this matter is as follows: that the employee under consideration was a supervisor; that he had accumulated a very large number of unused vacation days and compensatory time days for hours worked beyond the normal working hours; that in July of 1973, the Board of Election Commissioners established a policy limiting the number of such days that could be carried forward into 1974; that your Office takes these days into consideration when determining how much time an employee has coming for salary purposes when he leaves your service; and that this employee is seeking payment for all of the above noted days he had accumulated at the time he left your Office. Your communication requests our opinion with respect to the amount of time this employee is entitled to credit for under the Compensation Plan of the City of Chicago.

Section B(5) of the Compensation Plan for City of Chicago Employees for the Year 1974 provides in part as follows:

"For positions which are professional, supervisory and executive in character, the normal work weeks of 35 to 40 hours generally apply but the compensation is intended to be appropriate for the class regardless of variations in the time that may be required to satisfactorily fulfill the responsibilities of the positions."

In view of the fact that this employee is a Supervisor it is our opinion that the above noted provisions of the Compensation Plan preclude his obtaining additional payments from the City for the overtime he worked.

With respect to the unused vacation time this employee accumulated, it is clear from the various sections of the Compensation Plan dealing with the subject of vacations that he is entitled to be compensated for all of these days.

CREDIT COMPLAINTS AGAINST EMPLOYEES

*(Acting Commissioner of Public Works—
F. J. D.—November 15, 1974)*

Your letter dated October 24, 1974, addressed to Richard L. Curry, Corporation Counsel of the City of Chicago, was assigned to this writer to reply to same. Your letter requested information concerning credit complaints regarding Department of Public Works employees.

In response to your query I call your attention to the attached copy of a decision rendered by the Appellate Court of the State of Illinois. At page 3 in this decision you will note that the City contended then, as it now contends,

that the Illinois decisions have established a public policy against embroiling the City of Chicago in private litigation, in which it has no direct interest. Case law is legion on this point, but, perhaps, the most succinct statement of this policy was given in the case of *Merwyn v. City of Chicago*, 45 Ill. 133, wherein the Court held:

"A municipal corporation cannot be properly turned into an instrument or agency for the collection of private debts. It exists simply for the public welfare, and cannot be required to consume the time of its officers or the money in its treasury in defending suits, in order that one private individual may the better collect a demand due from another."

Further, you will find attached a copy of an opinion rendered by the Corporation Counsel's office on January 13, 1960. This opinion we feel, is directly on point with your query and consistent with the case law as given above.

In light of the foregoing, we are of the opinion that it is not proper for your Department to become embroiled in any credit complaints regarding Department of Public Works employees.

We trust that the foregoing will lend you some assistance.

RIGHT TO APPEAL SUSPENSION

(Commissioner, Department of Water and Sewers—
P. M. S.—January 7, 1975)

We acknowledge receipt of your communication with respect to Mr. Thomas E. Ryan and the same has been assigned to the undersigned for consideration and response.

Our understanding of the facts in this matter is that a report came to your attention concerning Mr. Ryan, a Foreman in your department; that after looking into the matter you concluded that Mr. Ryan failed to properly supervise his men on a given occasion and that Mr. Ryan was therefore suspended for one day. Thereafter, Mr. Ryan and his attorney submitted various statements to your department which they feel show that Mr. Ryan acted properly on the occasion in issue and that his suspension was unwarranted. You are desirous of our opinion as to how you should respond to the attorney for Mr. Ryan.

Section 10-1-18 of Chapter 24 of the Illinois Revised Statutes gives an employee the right to appeal a suspension to the Civil Service Commission if the suspension was for more than five days or was for any length of time within six months of a previous suspension. Singular suspensions for five days or less imposed by a department head for minor infractions are not subject to review.

Mr. Ryan, therefore, does not have a legal right to appeal his suspension to a higher authority. With respect to the type of response that should be made to his attorney, this would depend entirely upon your determination of whether Mr. Ryan acted properly or improperly in view of both the information you had at the time he was suspended and the information he subsequently furnished to you. It would be our suggestion that you inform the attorney for Mr. Ryan that you have reviewed the matter and inform him of your decision to let the suspension stand or to rescind the suspension as the case may be.

PREFERENCE POINT ELIGIBILITY—
VIET NAM VETERANS

*(Personnel Director, Civil Service Commission—
M. S.—January 22, 1975)*

Your letter of January 17, 1975 addressed to William R. Quinlan, Acting Corporation Council of the City of Chicago, has been referred to the undersigned for review and reply.

Your letter states that Chapter 24 Sec. 10-1-16, Illinois Revised Statutes indicates that honorable discharged veterans shall be eligible for veteran preference if they have served "... at any time between January 1, 1961 and the date Congress declares the Viet Nam conflict ended."

You ask, what date, if any, should be interpreted as the cut-off for the granting of Veterans Preference in light of your understanding that Congress has not taken any action nor is contemplating any action officially recognizing the end of the Viet Nam conflict.

Please be advised that on September 28, 1971, a joint resolution of Congress was passed titled Termination of hostilities in Indo-China, Pub. L. 92-129, Title IV Sec. 401; 85 Stat. 360 which provides:

"It is hereby declared to be the sense of Congress that the United States terminate at the earliest practicable date all military operations of the United States in Indochina and provide for the prompt and orderly withdrawal of all United States military forces at a date certain subject to the release of all American prisoners of war held by the government of North Vietnam and forces allied with such Government, and an accounting for all Americans missing in action who have been held by or known to such Government or such forces.

"The Congress hereby urges and requests the President to implement the above expressed policy by initiating immediately the following actions:

"(1) Negotiate with the Government of North Vietnam for an immediate cease fire by all parties to the hostilities in Indochina,

(2) Negotiate with the Government of North Vietnam for the establishing of a final date for the withdrawal from Indochina of all military forces of the United States contingent upon the release at a date certain of all American prisoners of war held by the Government of North Vietnam and forces allied with such Government.

(3) Negotiate with the Government of North Vietnam for an agreement which would provide for a series of phased and rapid withdrawals of United States military forces from Indochina subject to a corresponding series of phased releases of American prisoners of war concurrently with the withdrawal of all remaining military forces of the United States by not later than the date established pursuant to paragraph (2) hereof."

From the foregoing it would be safe to assume that Congress declared the Viet Nam War concluded on approximately March 28, 1973, when our prisoners of war were released. It is our opinion that the Civil Service Commission could use this date as the cut off date in awarding veteran preference points pursuant to Chapter 24 Section 10-1-16 Illinois Revised Statutes. It would be advisable however to obtain some official document which would indicate officially when our government recognized that the return of our prisoners of war had been achieved.

DISCIPLINE FOR MISCONDUCT

*(Commissioner, Board of Health—P. M. S.—
March 7, 1975)*

We are in receipt of the communication from your office with respect to Mr. Lynn Baker, a Civil Service Laboratory Helper, and the same has been assigned to the undersigned for consideration and response.

Your communication notes that Mr. Baker has used most of his allotted sick days during the first two months of the year, and that he is apparently abusing the sick-day policy. With respect to this matter, I contacted Dr. Gavitt, and she informed me that Mr. Baker claimed he was ill on these days. While his statement might not be true, the Department would have to establish any charge it made against him on this point.

Your communication also points out that Mr. Baker is periodically not at his duty station when he ought to be. Mr. Baker clearly has an obligation to perform his assigned duties and to be at his duty station. If he fails to do so, he should be disciplined. However, after reviewing this entire matter it is our opinion that the Civil Service Commission would not impose a disciplinary sanction upon Mr. Baker in excess of what your Department itself is authorized by law to impose.

There are obviously situations where an employee is guilty of gross misconduct and Civil Service charges should be filed against that employee regardless of his prior disciplinary record. However, in many cases dealing with an employee's general course of conduct, it is our opinion that the best results are obtained from the Civil Service Commission when a Department demonstrates that it has previously taken disciplinary action against an employee itself. The employee should also be advised if his deficiencies continue the Department will seek his dismissal from the Civil Service. Then if the employee does not correct his conduct and charges are filed against him, the Civil Service Commission is fully cognizant that strong action has to be taken by it to correct this situation.

If you have any questions on this matter, or if our office can be of any further assistance, we shall be happy to be of service.

UNION LABOR AGREEMENT POLICY

(Chicago Law Firm—H. A. T.—April 3, 1975)

Your letter addressed to the Department of Urban Renewal of the City of Chicago, dated February 26, 1975, has been referred to this office for answer.

Although the City is sympathetic to your request to execute an agreement with Janitors Union Local No. 1, for Fireproof Apartment Buildings and the agreement to contribute to the Janitors Union Local No. 1 Health and Pension Fund Trusts, it has been the policy of the City for many years not to execute such agreements. As you are aware, this City has been in the forefront in its support of union wages and fringe benefits for its union employees. However, it is constrained by public policy and precedent not to execute any such formal agreements.

We call your attention to Volume 24, page 25 of Opinions of the Corporation Counsel for a comprehensive review of the City's position. This position was re-affirmed in Volume 25, page 43 of Opinions of the Corporation Counsel.

We trust that your office will accept the position of the municipality in this matter. Please be assured of our continued cooperation in meeting the goals of organized labor.

"RESIDENT" DEFINED

(Personnel Director, Civil Service Commission—
D. P.—June 19, 1975)

Your letter of May 14, 1975 requests the opinion of this office as to the definition of the phrase "actual residents of the City" as used in Section 25-30 of the Municipal Code.

The courts have stated that there is no fixed meaning for the term "residence." *Hughes v. Illinois Public Aid Commission*, 2 Ill. 2d 374 (1964). The courts have stated however that whether or not a particular location may be considered a person's residence must be decided after an examination of the circumstances.

To establish a new permanent residence, a person must show (1) that he has gone to a new home and lived there and (2) he has done so with intent to make the new residence his home. *Oswego Community School District v. Goodrich*, 28 Ill. App. 2d 407 (1961). The courts have also stated that merely living in a new location, even for a lengthy period, does not of itself indicate an intent to abandon one's permanent residence. The important factor is whether the new residence is taken with the intent of making it permanent and abandoning the former residence. *Meyer v. Meyer*, 333 Ill. App. 450 (1948); *Kaku Naquno v. McGrath*, 187 F. 2d 759 (7th Cir., 1951), *aff'd*. 342 U.S. 910.

In *Mercadante v. City of Patterson*, 266 A 2d 611 (NJ super. 1970), the Court held that a policeman who lived with his in-laws in the City several nights each week but spent the remaining time with his wife and family in a house outside the City was properly discharged for not obeying a residence requirement.

Other courts have similarly construed the phrase in a restrictive manner. Thus actual residence has been found to contemplate substantially the same attributes as are intended when the word "domicile" is used, and a permanent and fixed character is intended. *In Re Petersen's Estate*, 78 N.Y.S. 2d 572, 575. And in another context an actual resident has been held to be one who is in a place with the intent to establish there his domicile or permanent residence. *State ex. rel Schoonover v. Crabill*, 287 N.W. 669, 672.

It is thus clear that the acquisition of a local address solely for the purpose of claiming it as a residence as a requirement of public employment must be viewed as a subterfuge designed to avoid the obvious objectives of the ordinance. What is required is that the employee actually dwell at the purported residence, not that he have a mailing address at which he may on occasion spend some minimal amount of time, while, for example, his family live outside the city and his children attend schools outside of the city in which the employed parent purports to reside.

CHIEF OPERATING ENGINEER CLASSIFICATION

*(Personnel Director, Civil Service Commission—
P. M. S.—June 26, 1975)*

We are in receipt of your communication with respect to Mr. Edward Lucas and the same has been assigned to the undersigned for consideration and response.

Our understanding of the facts in this matter is that the Classified Plan of the Civil Service Commission includes a position designated as "Chief Operating Engineer." There are slightly over 20 of these positions provided for in the appropriation ordinance of the City of Chicago and the Title Code Number given said positions is 7747. The Classification Plan also includes a position designated as "Chief Operating Engineer-Planning." The Title Code Number given this position is 7746 and only a single such position is provided for in the current appropriation ordinances. The Civil Service Commission created the position of Chief Operating Engineer-Planning because it concluded that the complexities of the heating system at O'Hare International Airport require the establishment of a separate classification to fulfill these responsibilities.

Your communication points out that Mr. Lucas is a certified Chief Operating Engineer (Title Code No. 7747) and is presently on a reinstatement register due to the fact that there are no vacancies in that position. The position of Chief Operating Engineer-Planning (Title Code No. 7746) is presently being filled by a temporary appointee and an attorney on behalf of Mr. Lucas has made a demand upon you that Mr. Lucas be appointed to that position.

The Civil Service Commission, having the responsibility of having to classify positions, clearly has the right to establish a specialized position upon determining the need for it. When the Civil Service Commission took such action with respect to the position of Chief Operating Engineer-Planning it thereby created a position that was separate and distinct from all other positions previously classified by it.

It is our opinion Mr. Lucas has a right to the position of Chief Operating Engineer (Title Code No. 7747) whenever that position is occupied by a temporary appointee or a vacancy occurs therein. However, Mr. Lucas is not a certified Chief Operating Engineer-Planning (Title Code No. 7746) and does not have the same rights with respect to this position.

It is, therefore, our opinion that Mr. Lucas does not have a legal right to the position of Chief Operating Engineer-Planning because of the fact he has certification in the position of Chief Operating Engineer.

UNEMPLOYMENT COMPENSATION

*(Commissioner, Department of Public Works—
P. M. S.—July 1, 1975)*

We are in receipt of your recent communication with respect to a previous employee of your Department making a claim for unemployment compensation. In view of the fact that your Department periodically receives similar notices from the Department of Labor of the State of Illinois, we would like to furnish you with the following information and offer you our suggestions as to what action your Department should take with respect to these communications.

Since the City of Chicago is a municipal corporation it is not liable for the payment of unemployment compensation contributions and employees of the City of Chicago cannot obtain unemployment compensation based upon their service with it. However, an employee of the City of Chicago may be eligible for unemployment compensation based on his employment with another employer.

Whenever anyone applies for unemployment compensation, the Department of Labor notifies that person's last employer. Even if that person would be otherwise eligible for these benefits he would be disqualified if he voluntarily left his last job or was discharged by his last employer for misconduct connecting with his work. If that person's last employer has reason to believe that he may not be entitled to unemployment compensation for the reasons noted above, the last employer should notify the Department of Labor of the specific facts resulting in the termination of that person's employment in order that the Department of Labor can make the appropriate determination.

The last employer is required to notify the Department of Labor of any possible ineligibility within seven calendar days of its receipt of the notification of the particular claim. This can be accomplished by either using the forms furnished by the Department of Labor or setting forth the facts in a letter to them.

It is our opinion that if your Department has reason to believe that an applicant for unemployment compensation may possibly be ineligible for the reasons stated herein, your Department should inform the Department of Labor of the facts with respect to how that applicant's employment terminated within seven calendar days of receipt of the notification from the Department of Labor. It is also our opinion that if your records do not reflect that the applicant left his position voluntarily or was not severed from his employment for misconduct connected with his employment, your Department would not have to make a response to that notification.

REFUSAL OF OVERTIME

*(Acting Commissioner of Aviation—P. M. S.—
March 29, 1976)*

We are in receipt of your communication with respect to the situation of several Airport Operations Supervisors I and II objecting to working beyond the normal 40 hour week, and the same has been assigned to the undersigned for consideration and response. Your communication notes that the Department only requires this overtime work when an emergency (plane crash, bomb threat, snowstorm) occurs. You also note that it is impossible to foresee when these situations will occur at the time you prepare your normal work schedule. Your communication further states that it desires to take disciplinary action against those Airport Operations Supervisors I and II who refuse to work overtime in these situations. You desire our opinion as to whether or not the action you contemplate is proper.

It is apparent that various departments of the City of Chicago may from time to time have to meet an emergency situation. The situations you describe are good examples of this. It is our opinion that departments may require their employees to work beyond their scheduled hours in order to effectively deal with an emergency.

Airport Operations Supervisors I and II who are required to work in excess of their normal scheduled work week in order to deal with an emergency

situation should, however, be granted compensatory time off under the present policy of the City of Chicago. This time off should be granted as soon as the Department may conveniently do so.

It would be our suggestion that you inform the employees in question that the Department will require them to work in excess of the normal hours if an emergency arises and their services are needed; that they will receive compensatory time off for the extra hours they were required to work within a reasonable period; and that their refusal to obey an order to work additional time in this type of situation will result in the Department taking disciplinary action against them. This action could include the filing of charges with the Personnel Board of the City of Chicago. The Personnel Board has the authority to discharge or demote an employee as well as suspend him.

VETERAN'S RIGHT TO BACK PAY

*(Deputy Director of Personnel, Department of Personnel—
D. P. April 30, 1976)*

This letter is in response to your inquiry concerning the request for back pay made by a person who was re-employed by the City of Chicago upon his honorable discharge from military duty.

A brief summary of the facts of this case are as follows: Arthur E. Harris was employed by the City of Chicago as a library page prior to his entry into military service. On July 26, 1975, Harris was honorably discharged from the military, and in October, 1975, he requested re-employment. On January 19, 1976, he was re-employed in his prior position. He has requested, through the United States Department of Labor, Labor-Management Services Administration, restitution for lost wages from the date of his application for re-instatement to the date of his re-employment.

Rights to re-employment and employment benefits are granted to veterans by the Vietnam Era Veterans' Readjustment Assistance Act of 1974. (38 U.S.C. pars. 2021-2026.) This act gives any person who is inducted into the military or enlists and serves for not more than four years the right to request re-employment within 90 days of honorable discharge. Such person, if qualified, must be restored to his prior position without loss of seniority, or other employee benefits, "unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so." (§ 2021). The enforcement provision of the act permits the veteran to bring suit for damages against the employer for failure or refusal to comply with these re-employment provisions.

Here, Harris was properly re-employed to his prior position. Although the act is silent as to how quickly an employer must honor a request for re-employment to be deemed in compliance with the act, a delay of three months, as in this case, would most likely be deemed an unreasonable delay.

Thus, as you have recognized, the issue is whether the City of Chicago must compensate Harris for lost wages incurred during the three months in which his request was pending. In suits involving refusal to re-employ, federal district courts have held that veteran's rights are determined at the time of the request for re-employment. *Schreier v. M.H. Fishman Co.*, 176 F.2d 722 (3rd Cir. 1949). However, the purpose and intent of Congress in enacting re-employment statutes is not to penalize employers, but rather to compensate the veteran for any loss caused by military service. *Accardi v. Penn. R., Co.*, 383 U.S. 225 (1966). Thus, courts have held that it is proper to reduce the amount of lost wages by

the amount the veteran earned at other employment during the pendency of his request for re-employment. *Boston M.R.R. v. Bentubo*, 160 F.2d 326 (1st Cir. 1947).

Thus it is the opinion of this office that Harris is entitled to back pay from the first pay period after his application for re-employment was received by the Department of Personnel in October, 1975 to the date of re-instatement in January, 1976. This amount should be reduced by the amount, if any, which Harris earned during this period at other employment.

REVISION OF POSITION CLASSIFICATION PLAN

(Director of Personnel—R. O.—April 30, 1976)

This letter is in response to your inquiry concerning a proposal to consolidate five small eligibility lists for the position of Librarian I into one categorical list of qualified candidates.

The proposal you have submitted is authorized and appropriate under the City of Chicago Personnel Code. Your proposed plan is, in effect, a revision of a position classification plan and is permitted pursuant to Section 25.1-5(1)(4) of the Code.

If you have any further question in this regard, please contact me.

THEFT OF CITY PROPERTY

*(Acting Commissioner, Department of Streets and
Sanitation—H. A. S.—May 5, 1976)*

It is our considered opinion that there is no liability on the service station for the City property taken from Hilka's auto. Reasonable care was given to the auto left for service and the garage is not an insurer or obligated by absolute liability.

Hilka should be instructed to check with his carrier to see if the radio was covered by his policy in favor of the City. Perhaps, the reasonable value of the radio can be recovered by that method.

If no other means can be found, we recommend you close this matter.

SUBROGATION FOR WORKMAN'S COMPENSATION CLAIM

*(Commissioner, Department of Streets and Sanitation—
J. K. M.—April 15, 1977)*

In reply to your request of April 12, 1977, for an opinion as to whether the law firm of Facchini, Minton & O'Brien can examine a crane at the Calumet Incinerator Plant, we would have no objection.

The City of Chicago, under the Illinois Workmen's Compensation Act, is subrogated for the amount of money they paid the employee pursuant to a workman's compensation claim from any judgment or settlement that might be obtained from the manufacturer of alleged defective equipment. It is to the

City's advantage therefore, to assist our injured employee's attorney in any way possible so that he might recover from a third party.

Even were we to deny permission, a judge would order said inspection anyway.

I trust this reply shall be satisfactory.

ARTISTS WORK—CITY PROPERTY

*(Executive Director, Chicago Council on Fine Arts—
R. F. F.—January 24, 1978)*

This is in answer to your letter concerning the powers of the Chicago Council on Fine Arts to establish policies regarding the acquisition, ownership, right to, and disposition of works of art created by artists in the Council on Fine Arts' Artists-In-Residence Program.

You state in your letter that artists in residence are employed using funds supplied in part by the Federal Comprehensive Education and Training Act of 1973. Pursuant to that grant, the artists in residence and the City of Chicago have an employee-employer relationship. You state that it is the Chicago Council on Fine Arts' policy, as well as that of the CETA, that all works created as a result of this program shall be the property of the City of Chicago.

The Chicago Council on Fine Arts was created by the enactment of Chapter 7.3 of the Municipal Code and by the Mayor's appointment of the Council members and staff. The Mayor's Office of Manpower received CETA funds and, in turn, authorized the Chicago Council on Fine Arts to receive CETA funds and administer the Artists-In-Residence Program. The authority to administer this program necessarily carries with it the power to determine the terms under which artists create works of art under the program.

Accordingly, the Chicago Council on Fine Arts may establish the goals you describe by appropriate direction from its members. This may be done by resolution of the members. Following that, formal contracts may be prepared and signed by the artists employed in this program. The contract could establish the terms under which the artist receives employment and establish the right to works of art created under the program. In addition, other agreements could also be drawn which would establish the right to deal with the works of art if they are displayed or used by various City agencies. Since the Council on Fine Arts is the agency under which the works of art were created, it could establish guidelines for the use of such works of art, although technically all works remain the property of the City of Chicago.

The following are more specific answers to the questions you asked.

How can the Chicago Council on Fine Arts establish its ownership to works created in its Artists-In-Residence Program? Under Federal copyright law, the employer of an artist is deemed to be the author and owner of all works created by the artist in the scope of his employment. The Copyright Act of 1976 (effective January 1, 1978) states

Sec. 201. Ownership of copyright

....

(b) **WORKS MADE FOR HIRE.**—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have

expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

Sec. 101. Definitions

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment;

....

Thus all works created at the City's direction, on the City's time, with City materials or on City premises will be deemed owned by the City of Chicago.

Since artists in residence still retain the right to works created on their own time (if such works are not commissioned by the City), it might be well to draw an agreement between the artist and the City specifying exactly what his or her duties are as well as the rights to ownership under the circumstances of each individual's employment. This will insure public ownership of all rights to display and to license the works created under this program.

Can the artist employed by the City use the work for personal purposes, such as keeping a personal record of the work or for use in a portfolio? Only with the City's permission. However, care should be taken to assure against public display of the work, if the work has not been copyrighted pursuant to statute. Display or other publication would cause the City to lose its common law copyright and its right to a statutory copyright, unless the proper notice were attached to the work. The notice attached to the work should read "©" or "Copyright" and "1978 [year of first publication, which is not necessarily the year of creation], City of Chicago." The artist's use for purely personal purposes, such as inclusion in a portfolio, is a limited publication which would not prevent the City's copyrighting the work. Nevertheless, the best protection is the notice, since the work or its copies will be out of the City's control. Section 401 of the Copyright Act of 1976; *Letter Edged in Black Press v. Public Building Commission of Chicago*, 320 F. Supp. 1303 (N.D. Ill. 1970).

May the artist petition the Council on Fine Arts for permission to license the display of a work? Nothing prevents an artist from doing so. It might be wise to establish the guidelines under which such exceptions to the City of Chicago's complete ownership of the work may be granted, so that there is no question that all persons will be treated equally. Such standards may also be included in the agreement between the artist and the City of Chicago. Whenever such permission is granted, it should be made clear in writing that the license granted to the artist to use the work is not in derogation of the City's ownership of all other rights with respect to the work. Of course, the notice described above is necessary to protect the City's copyright.

How may the Chicago Council on Fine Arts assure, once possession of the work of art is transferred to another agency of the City of Chicago, that the transferee agency will not destroy the work? Technically, the ownership of the works of art are in the City of Chicago; however, the Chicago Council on Fine Arts is the agency of the City of Chicago through which the City acts to provide for the creation and disposition of the work. As such, the Chicago Council on Fine Arts may issue instructions to any transferee agency indicating the proper display of the work of art and its ultimate disposition.

May the Chicago Council on Fine Arts establish a public archive for the retention of original works created in the Artists-In-Residence Program? This is a power implied in the grant to the Chicago Council on Fine Arts to administer the Artists-In-Residence Program.

May the Chicago Council on Fine Arts maintain a provenance record for the works created in the program? As the agent of the owner, the Chicago Council on Fine Arts may establish such a record indicating the details of licenses regarding the work of art and the location of each work.

May the Council on Fine Arts create a mechanism by which the artists may be consulted in the event the City of Chicago or any of its agencies wishes to relocate a work, reproduce it, or sell or license it to a third party? Such a policy may be incorporated into any employment agreement between the artist and the City of Chicago. However, care should be taken in drafting such a provision to indicate that the artist *may be consulted*, and that the City of Chicago has no obligation to do so, and in doing so it does not give up any of its rights in the work of art.

May a policy be established whereby the artist may receive a certain percentage of any profits derived from the sale or licensing of a work of art? Such a provision may also be incorporated into the terms of the employment agreement. However, I understand from your letter that the Council may not wish to give a royalty in all cases, and that the percentage of the royalty may vary from case to case. In such an instance, the employment agreement should not provide for any royalty arrangement. Later, on a case-by-case basis, the members of the Council might grant a royalty based upon any profits received from the sale or license of my work owned by the City of Chicago. However, to insure that all persons are treated on an equal basis, the Council should have established guidelines setting forth the instances in which such royalty arrangements may be made and the percentages to which an artist may be entitled.

May the Chicago Council on Fine Arts accept donations for the purpose of expanding art programs? The ordinance establishing the Council expressly so states. Section 7.3-7 states the Council may accept offers of gifts or grants from the Federal Government, State of Illinois, their agencies or offices, or from any person, firm or corporation of services, equipment, supplies, materials or funds and may expend such receipts on projects suitable for the performance of its duties under this Act.

If you have further questions, please do not hesitate to ask.

CONCURRENT CLAIMS— WORKMEN'S COMPENSATION AND SICK PAY

*(Chief Administrative Officer, City Council Committee on
Finance—R. F. F.—April 28, 1978)*

It has come to the attention of this Department that the above cited employee has been granted his fourth 30 day extended sick leave.

As you are aware, Mr. Lavin filed a claim against the City of Chicago, pursuant to the Occupational Diseases Act, wherein he alleged that, as a result of exposure to noxious fumes in August 1975, he has been totally disabled from work and further he alleged that the City of Chicago failed to pay him his temporary total disability benefits and further that the City of Chicago failed to provide the necessary medical treatment to him. This claim was filed at the Illinois Industrial Commission on April 19, 1977 as number 770D 194. This Department is presently engaged in the litigation of this claim.

It is the opinion of this Department that any employee who is injured in an accident arising out of and during the course of his employment by the City and who suffers a period of temporary total incapacity from work following said

accident should not be paid "sick pay" but rather should be compensated under the provisions set forth in the Illinois Workmen's Compensation or Occupational Diseases Act.

In the event that the Illinois Industrial Commission should decide that Mr. Lavin did suffer an industrial accident and that he has been totally disabled, the City of Chicago will be ordered to pay Mr. Lavin the sum of \$231.42 for each week since August 5, 1975.

The Industrial Commission will not allow a credit to the City of Chicago for any payments made to Mr. Lavin under our Employee Benefits and Compensation Plan. This could result in a situation where Mr. Lavin would receive double compensation for all the time he was paid sick pay under the Employee Benefits and Compensation Plan.

It is our recommendation that in the future, steps be taken to avoid these situations of possible double compensation by the City of Chicago.

We recommend that an employee not be paid sick pay under our Employee Benefits and Compensation Plan when we have notice that said employee has filed a Workmen's Compensation Claim or an Occupational Disease Act Claim for the occurrence to which he is requesting sick pay.

WITNESS FEES

*(Director of Personnel—J. P. D.—
September 6, 1978)*

This letter is sent in response to your inquiry of August 14, 1978. In your letter of that date you seek information pertaining to the Statutory Fees due witnesses. Chapter 53 §65 of the Illinois Revised Statutes 1977 states as follows:

65. Per diem and mileage.] § 47. Every witness attending in any county upon trials in the courts shall be entitled to receive the sum of \$20.00 for each day's attendance and 20 cents per mile each way for necessary travel. For attending in a foreign county, each day's travel shall constitute a day of attendance. Every person attending for the purpose of having his deposition taken shall receive the same per diem and mileage as provided in this section for witnesses in circuit courts; Provided, no allowance or charge shall be made for the attendance of witnesses aforesaid unless the witness shall make affidavit of the number of days he or she actually attended, and that such attendance was at the instance of one or both of the parties or his attorney. In criminal cases where a witness shall be required to attend from a foreign county or state, either before the grand jury or at the trial of the cause in the court, he shall receive the same per diem and mileage as above provided for witnesses in circuit courts to be paid out of the county treasury of the county where the crime was committed on the certificate of the clerk of the court where the trial is being had: Provided, he shall make affidavit of the distance traveled, that it was the usually traveled and most direct route, of the number of days' actual travel and attendance, and that such attendance was at the instance of the State's Attorney or the accused, or his attorney, to which shall be added the certificate of the judge that the amount is reasonable and that he was a material witness in the court or before the grand jury.

Amended by P.A. 80-392, § 1, eff. Oct. 1, 1977.

In light of the above, it is our opinion that the Department of Personnel is entitled to the amount of fees as provided above.

NAME CHANGE

(*Director of Personnel—G. S. L.—September 25, 1978*)

You have requested the advice of our office regarding the legality of City employees, Jesse Forrest, and Gregory Levi, changing their names via "Notarized 'common law right to Change Name' affidavits."

The State of Illinois has specific statutory provisions with reference to court proceedings for change of name. (Ill. Rev. Stats. Chapter 96 Sections 1-3). However, at common law an individual may lawfully adopt whatever name may suit his convenience without any court proceedings, and the courts have held that the Illinois Statutory provisions with reference to court proceedings changing a name are not exclusive but are merely permissive and that common law is not abrogated. *Reinken v. Reinken*, 351 Ill. 409; *Solomon v. Solomon*, 5 Ill. App. 2d 297.

Therefore, assuming their name changes are not for fraudulent purposes and they have, in fact, properly notified the appropriate agencies of their name changes, our office is of the opinion that it is legal for Mr. Forrest and Mr. Levi, to change their names pursuant to the above mentioned "Notarized Affidavits."

WITHDRAWAL OF LEGAL REPRESENTATION

(*City Employee—R. L. A.—March 8, 1979*)

On February 15, 1979, this writer contacted you by telephone to solicit your cooperation in defending you in an action now pending in the United States District Court for the Northern District of Illinois, Eastern Division, namely: *Eddie Winfield v. Andrew Murcia and Thomas Byrne*, No. 78 C 1792. On February 15, 1979, you informed the writer that you would not cooperate.

Thereafter, this writer again contacted you by telephone to inform you that your failure to cooperate with the Corporation Counsel's Office would result in the Corporation Counsel's Office withdrawing its representation of you in the above-mentioned action. After having been so informed, you told the writer that you would not cooperate. You were then informed by the writer that the Corporation Counsel's Office would withdraw its representation of you in the above-mentioned action.

Please be informed that due to your failure to cooperate with the Corporation Counsel's Office in the above-mentioned action, the Corporation Counsel's Office will take all necessary measures to withdraw its representation of you in *Winfield v. Murcia and Byrne*, No. 78 C 1792.

Please be further informed that your failure to cooperate with the Corporation Counsel's Office in the above-mentioned action could result in your being personally liable for any and all damages which may be awarded to the plaintiff in the above-mentioned action should you be found guilty.

FOSTER HOME HOUSE PARENT—
CONFLICT OF INTEREST

(*Commissioner, Department of Human Services—
R. L. A.—June 21, 1979*)

Your recent letter, with attachments, together with discussions with members of your staff, advises us that a contract was entered into with the Volun-

teers of America to operate a foster home under an ILEC grant. We are further advised that said Volunteers of America leased a home for said foster home and hired its owner as a house parent. Due to the fact that the lessor/house parent is a Chicago police officer, ILEC, has suspended the grant to the City of Chicago for the project on the basis that the City's conflict of interest clause is being violated.

You are, then, requesting our interpretation of said Conflict of Interest clause and, specifically the first paragraph thereof, reading as follows:

"No member of the governing body of the City and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the carrying out of the Project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract."

Apparently ILEC had interpreted this clause by eliminating much of the language contained therein, and have left only the following:

"... no ... employee ... of the City ... shall have any personal interest ... in this Contract."

The ILEC interpretation of this provision is erroneous insofar as they have ignored the important portion of the paragraph which gives it its import, to-wit: the fact that for a conflict of interest to be present, the person having an interest in the contract must also be one who exercises some function or responsibility in connection with the project on the other side. For example, if the house parent in this project were the Department of Human Services Project Director for the project, a conflict of interest would be present.

It is our opinion, then, that an employee of the City having nothing to do with the City's end of a contract whatsoever cannot be guilty of a conflict of interest for having a resultant interest in the contract. Thus, whether the lessor/house parent is a City police officer or a non-City employee, so long as he has nothing to do with the City's management of the Project in question, there can be no conflict of interest and, therefore, no conflict of interest is present in the instant matter.

DISCHARGE AND ACCUMULATED VACATION PAY

(*Director of Personnel—R. W. F.—June 26, 1979*)

In response to your inquiry of whether Gary P. O'Sullivan, an employee discharged for cause, is entitled to accumulated vacation pay, please be informed that Section 6 (2) (e) of the Employee Benefits and Compensation Plan for City Employees provides:

"In the event an employee has not taken his or her vacation as provided for herein by reason of separation from City service *other than by discharge for cause*, he or she, or in the event of death, the widow or widower or estate, shall be entitled to receive his or her prevailing salary for such unused vacation." (Emphasis added.)

In light of this Section, Mr. O'Sullivan is not entitled to receive the accumulated vacation pay.

CHILD LABOR LAWS

(Director of Personnel—R. W. F.—July 11, 1979)

In response to your inquiry of whether the Public Library may hire 15 year olds, please be informed that the Child Labor Laws permit the hiring of 15 year old minors, as long as the minor is not involved in any dangerous or hazardous work.

However, a minor is restricted in the number of hours he/she shall work. No minor may work more than six (6) consecutive days in any one week, or more than forty-eight (48) hours in any one week, or more than eight (8) hours in any one day. A minor is prohibited from working between 7:00 p.m. and 7:00 a.m., from Labor Day until June 1 or between 9:00 p.m. and 7:00 a.m. from June 1 until Labor Day. On days when school is in session, a minor under the age of 16 shall not be permitted to work more than 3 hours.

It is required of the employer to keep upon the work premises a register listing the name, address and age of every minor between the ages of 14 and 16. The register must be accessible to the authorized officers or employees of the Department of Labor and to the truant officers or other school officials charged with the enforcement of the compulsory education laws.

In addition, the employer must keep on file an employment certificate issued by the Department of Labor. Upon termination of the employment, the employer must return the certificate to the issuing officer.

Therefore, the Child Labor laws do not prohibit the hiring of 15 year olds by the Public Library for the position of Library Page.

BIDDERS ON SALES OF CITY PROPERTY

(Comptroller—H. F. W.—July 26, 1979)

We wish to acknowledge receipt of your letter in which you request an opinion as to whether or not City employees may bid on parcels of real estate offered for sale by the City of Chicago. In your letter, you stated that the sub-committee of the Finance Committee on Land Acquisition and Disposition has received bids on City owned parcels and that in several cases, the highest bidder is an employee of the City of Chicago.

The question raised in your letter is whether or not a City employee may bid, along with others, on the purchase of properties offered for sale by the City of Chicago. The Municipal Code does not provide for or regulate the sale of real estate owned by the City as it applies to City employees.

Two statutory provisions bear upon the sale or purchase of governmental units. Section 3-14-4 of the Municipal Code (Illinois Revised Statutes, 1975), Chapter 24, Paragraph 3-14-4, provides in part that "no municipal officer shall be interested, directly or indirectly . . . in the sale of any article. . . . Said Section further provides that "no municipal officer shall be interested, directly or indirectly, in the purchase of any property which belongs to the municipal-ity. . . ."

Section 3 of the Corrupt Practices Act, (Illinois Revised Statutes, 1975), Chapter 102, Paragraph 3, reads in pertinent part that "no person holding any

office, either by election or appointment, under the law of the Constitution of this State, may be in any manner interested, either directly or indirectly . . . in any contract or the performance of work in the making or letting of which said officer may be called upon to act or vote. Said Section further provides that "no such officer may represent any person in any application or bid for any contract or work. . . ."

It is clear from a reading of these two statutory provisions that the intent of the statutes is to prevent a conflict of interest whereby a municipal officer may acquire privileged information in the course of his duties and responsibilities and which would place him in an advantageous position in bidding on properties offered for sale by a governmental unit. It would follow that an elected official or a municipal officer or one holding a supervisory position would be disqualified from bidding on City owned properties.

From a review of your letters pertaining to the sale of the parcels located at 1244 North Wells Street, 3936 North Ashland Avenue and 3548 West Montrose Avenue, it appears that the City employees who were designated the highest bidders on each of these three parcels were non-supervisory, regular employees of the City of Chicago. Every member of the public is entitled to bid on parcels offered for sale. Employment by the City of Chicago in itself does not disqualify a person from being a qualified bidder on the sale of City owned property. It would follow that unless the City employee who bids on a parcel is an employee of the Department of Finance, who may have privileged information, or a supervisory employee or a municipal officer, said City employee has the same rights as another member of the public to make a bid on City properties offered for sale.

It is the opinion of our office that if you review the employment status of the three highest bidders who are employees of the City of Chicago on the above-mentioned parcels and if you determine that said employees are not supervisory employees, are not municipal officers and are not employed in a department that may offer privileged information, then you can determine that said City employees are entitled, as members of the general public, to bid on City properties offered for sale. If you determine that their bid is the highest qualified bid and that they should not be disqualified for the reasons stated above, then it is within your discretion to accept their bid on said offering.

Section B. SALARIES

EARNED WAGES—EMPLOYEE DECEASED

(City Comptroller—P. M. S.—May 15, 1975)

We are in receipt of your communication with respect to the payment of wages earned by employees who die prior to being paid said wages and the same has been assigned to the undersigned for consideration and response.

Your communication points out that this matter is a potential source of litigation against the City and you desire an opinion from our office with respect to what procedure your office should follow. It is our understanding that the basic problem your communication is directed to is where an employee earns wages during the course of a normal two week pay period but dies prior to the completion of the pay period and that the amount involved in these situations does not exceed \$1,000.00.

Wages earned by an employee but not paid to him during his life should be paid to his Estate following his death. If an Estate is opened for such an employee in the Circuit Court of Cook County, Illinois the proper procedure would be to pay these wages to the duly appointed executor or administrator of the Estate of the deceased employee. This legal representative of the Estate should be required to furnish your office with a certified copy of his letters of office and a receipt should be obtained from him.

However, every decedent does not have an estate formally opened on his behalf in the Probate Court. There are many reasons why it might not be necessary to formally open an Estate on behalf of a decedent. The primary function of the Probate Court is to determine ownership. Assets of a decedent held in joint tenancy or in a trust are not actually part of his estate since ownership of these assets are generally controlled by the documents establishing the joint tenancy or trust and not by the decedents will or by the laws of descent.

Another reason why estates are not formally opened in Court is because of the provisions of Chapter 3, Section 324 of the Illinois Revised Statutes. This section provides that in certain situations a person or corporation holding assets of a decedent that would otherwise be subject to being probated can distribute these assets upon receipt of an affidavit and still be legally protected to the same extent as if disposition was made to the Court appointed executor or administrator. This legislation provides a means of expediting small estates.

The Circuit Court of Cook County provides these "Small Estate Affidavits" free of charge and on the reverse side of the form Section 324 is set forth. Enclosed please find one of these forms.

The \$5,000.00 limitation contained in Section 324 with respect to the use of a Small Estate Affidavit applies only to assets of the decedent that would otherwise need to be probated to determine ownership. It should be noted that if a deceased employee owned a \$20,000.00 home or bank account in joint tenancy with his wife, this would not prevent her from utilizing the Small Estate Affidavit since the home or bank account, being in joint tenancy, is not technically part of his estate. It should also be noted that the proceeds of life insurance policies would not be included in this \$5,000.00 restriction unless the proceeds thereof were specifically made payable to the estate of a decedent.

If the funeral expenses have not been paid the unpaid wages of the deceased employee should be paid to the person entitled to payment of these unpaid funeral expenses. Some other requirements of Section 324 are as follows: it should only be used when no estate will actually be opened in the Probate Court; the decedent must not have any other creditors; and thirty days must have elapsed since the death of the decedent.

We would assume that in the vast majority of situations it is the wife of a deceased employee who is attempting to secure his wages. Since she is entitled to a surviving spouse's award that will always exceed the wages earned by an employee it would be our recommendation to distribute the funds to her. Where there are children and no surviving spouse we would recommend that the funds be equally distributed to the children.

The procedure outlined in Section 324 is not as complicated as it might first appear and should present no problem where a widow or child utilizes it. If someone from your office would like to discuss this matter our office will be happy to be of service.

CHAPTER III—ANNUITIES AND BENEFITS FOR CITY EMPLOYEES

Section A. MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND

SERVICE CREDIT FOR PENSION PURPOSES

(Fund's Executive Secretary—P. M. S.—July 18, 1974)

The above entitled case was heard and ruled upon by Judge Arthur L. Dunne of the Circuit Court of Cook County, on June 12, 1974 and on June 14, 1974 an order was entered in accordance with the decision of the Court. Enclosed please find a copy of said order.

The Court was clearly influenced by the fact that the Retirement Plan of the Chicago Transit Authority, enacted pursuant to a specific grant of authority from the General Assembly, gives credit to employees for service rendered to its predecessor public utilities. The Court felt that when the General Assembly removed the restriction in 1971 with respect to the amount of service credit ex-CTA employees could get with your Fund, that the legislative intent was that this service include that service rendered to predecessor public utilities of the Chicago Transit Authority, in view of the fact the General Assembly knew at the time of the 1971 enactment that the Retirement Plan required credit for such service. The Court felt it would be inconsistent to hold that the General Assembly intended credit for this service to be granted for pension purposes in one instance and then to hold that the General Assembly intended that credit for the same service not be granted for pension purposes in another instance.

Our office has reviewed this matter and determined that an appeal would be unavailing. If we can be of any further assistance to you in this matter, we shall be happy to do so.

MONEY PURCHASE ANNUITY

(Assistant U. S. Attorney—R. L. C.—October 4, 1974)

Your recent letter requests information relating to the pension status of Earl Bush now that he has withdrawn from City employ prior to concluding 20 years of consecutive service.

City employees who contribute during their tenure to the Municipal Employees Annuity and Benefit Fund are entitled, at the conclusion of 20 years of consecutive service, to what is known as a "formula annuity" which is calculated on the basis of a percentage of the employee's average annual salary during the four highest consecutive salary years within the last ten years. A City employee with 20 years of service is entitled at age 60 to 35.7% of the average of his last four highest years salary.

Employees who contribute to the fund during their tenure but who withdraw from City service prior to completing 20 years are not entitled to the "formula annuity," but receive instead what is known as a "money purchase annuity." This is customarily a considerably reduced annuity from that provided

for under the "formula annuity" and is derived from an annuity purchase with a combination of the employee's contribution and a percentage of the contribution made in his behalf by the City.

Mr. Bush would therefore be entitled to a "money purchase annuity" rather than the customary and considerably higher "formula annuity" which city employees with 20 years of service enjoy.

CONSTITUTIONALITY OF ILLINOIS PENSION CODE

*(Executive Secretary, Municipal Employees' Annuity and
Benefit Fund of Chicago—P. M. S.—March 19, 1979)*

We are in receipt of your communication with respect to three amendments to Article 8 of the Illinois Pension Code recently enacted by the General Assembly and signed into law by the Governor and the same has been assigned to the undersigned for consideration and response.

Your communication points out that the Retirement Board of the Municipal Employees' Annuity and Benefit Fund opposed both the enactment and later the signing of these amendments by the Governor. The basis of your objection was that these amendments liberalized the granting and/or transfer of service credits to active members of the General Assembly and certain special corporation counsels to such an extent that they are inequitable. You seek an opinion from our Office with respect to the legality of these amendments.

Generally in considering the issue of the validity of a law it is advisable to examine the presumptions of law utilized by courts; how courts have historically treated statutes within the subject area involved; and the manner in which the statute will effect those to or against whom it is directed.

A presumption exists in favor of the validity of a statute and every reasonable doubt is resolved in its favor. *Northshore Post No. 21 v. Korzen*, 38 Ill. 2d 231. It also has been presumed that the General Assembly conducted studies and had full knowledge and information on all existing conditions with respect to the subject matter of the legislation they enacted at the time of their action. *Illinois Law and Practice, Statutes, Section 13*. It is often possible to construe a statute one of several ways and court have a duty to seek a reasonable construction that will render it valid in preference to one which would invalidate it. *Lincoln Nat'l. Life Ins. Co. v. McCarthy*, 10 Ill.2d 489.

Within the area of governmental pensions, the Courts of Illinois have steadfastly recognized the pre-eminent position of the General Assembly. This recognition manifests itself in statements by the Courts that these Pension Funds derive from the General Assembly not only all the powers they possess but their very existence itself. Historically the Courts have found that in most incidents the General Assembly had nearly unabridged power to alter, amend or repeal pension provisions and, therefore, have displayed a reluctance to strike down pension provisions enacted by the General Assembly. *Pecoy v. City of Chicago*, 265 Ill. 78; *Beutel v. Foreman*, 288 Ill. 106; *Peo. ex rel. Keegan v. Board of Trustees*, 412 Ill. 430; *Blough v. Ekstrom*, 14 Ill. App. 2d 153; *Rex v. Retirement Board*, 17 Ill. App. 2d 552. Also see Cohn, "Public Employee Retirement Plans—The Nature of Employed Rights," 1968 U. of Ill. 2, p. 32.

The manner in which a statute will effect those to or against whom it is directed will often be a significant factor taken into consideration by Courts

when determining the validity of a statute. Generally statutes that are punitive in nature are strictly construed while statutes which are remedial or beneficial are liberally construed. With respect to pension statutes, Courts have held that the purpose of these laws is beneficial and that these statutes should be liberally construed in favor of those sought to be benefited. *Oliver v. Retirement Board of Municipal Employees Annuity and Benefit Fund of Chicago*, 311 Ill. App. 38.

With reference to your inquiry it is our opinion that none of the statutes are unconstitutional or invalid on their face. For the various reasons stated herein we question whether an attack on any of these statutes would be successful. While we understand that you consider them to be ill advised, it is, however, the responsibility of the General Assembly to enact the pension laws and the responsibility of the Retirement Boards to implement and administer these laws. The General Assembly enacted and the Governor signed these bills, both cognizant of the issues you raise.

For the foregoing reasons, it is our opinion that the statutes are presumptively valid and should be implemented unless and until such time a Court affirmatively holds one of them to be invalid.

MANDATORY PARTICIPATION

(Director of Personnel—R. W. F.—May 22, 1979)

In response to your letter of May 8, 1979, participation in the Municipal Employees Annuity and Benefit Fund is mandatory for Career Service Employees.

Further, the pension section of the Illinois Revised Statutes, Chapter 108½ do not allow for a waiver of participation in the fund.

If you have any additional questions, please feel free to contact our office.

Section B. FIREMEN'S ANNUITY AND BENEFIT FUND

MAJORITY VOTE REQUIREMENT

*(Secretary, Firemen's Annuity and Benefit Fund—
P. M. S.—October 7, 1976)*

Your request for a legal opinion with respect to how many members of the Board of Trustees of the Firemen's Annuity and Benefit Fund of Chicago does it take to constitute a quorum and also how many members of the Board does it require to legally grant an annuity to a member has been received by our office and assigned to the undersigned for consideration and response.

Article 6 of the Illinois Pension Code, Chapter 108½, Illinois Revised Statutes, regulates the Firemen's Annuity and Benefit Fund of Chicago. Section 6-174 provides that "A board of 8 members shall constitute a board of trustees authorized to administer the provisions" of the Statute establishing and regulating the Firemen's Annuity and Benefit Fund of Chicago.

Section 6-178 provides as follows:

Board meetings. The board shall hold regular meetings in each month and such other meetings as it deems necessary. A majority of the members shall constitute a quorum for the transaction of business at any meeting; provided, that no pension, annuity, or benefit shall be allowed or granted and no money shall be paid out of the fund unless ordered by a vote of the majority of the members of the board as shown by roll call entered upon the official record of proceedings of the meetings at which such action is taken. All board meetings shall be open to the public.

Black's Law Dictionary (4th Edition) defines "majority" as "the number greater than half of any total." This definition is clearly in conformity with the commonly accepted meaning of the word. When the Legislature stated a "majority of the members shall constitute a quorum" it is our opinion that it clearly intended to mean a majority of the members designated by it in Section 174 as constituting the Board of Trustees.

Therefore, since the Board of Trustees consists of 8 members, the number greater than half this total is obviously 5. It is, therefore, our opinion that it requires 5 members to constitute a quorum for the transaction of business. It is also our opinion that since "no annuity . . . shall be paid . . . unless ordered by a vote of the majority of the members of the board . . ." the favorable vote of 5 members is required to grant an annuity.

DETERMINATION OF HEIRS AT LAW

*(Executive Secretary, Firemen's Annuity and Benefit
Fund—W. C.—May 17, 1979)*

You have requested an opinion as to who may be entitled to a refund of monies in the following factual situation:

Firefighter Jolivette married Nathalie, a divorcee with two minor children, and from that union there were two children born. After the firefighter's death, his widow received benefits until her death. Applications for refund of monies remaining in the account have been made by both the children of the previous marriage and the children of Firefighter Jolivette and Nathalie Jolivette. Firefighter Jolivette did not adopt the children of his wife from a prior marriage.

Section 6-162 provides for a refund of monies accumulated in the fireman's account to be paid:

- (a) to the executor or administrator of the fireman's estate;
- (b) for burial expenses;
- (c) to his heirs at law.

Notwithstanding alternatives (a) and (c), the underlying question presented in either instance is whether heirs at law should be determined at the time of the firefighter's death or at the time the refund becomes available, i.e., at the death of his surviving widow.

If it is considered that the appropriate time to determine the heirs of the deceased fireman is at the time of his death, then his widow, along with his children, would be entitled to participate in the refund. In such case, upon the widow's death her share would pass to her children, including those who were unrelated to the firefighter.

It is my opinion that such a result is not intended by the Legislature in

drafting Section 6-162. Rather, the intended distribution under Section 6-162 should be to the firefighter's heirs, assuming his wife or parents predeceased him. Such an interpretation would reflect the actual distribution pattern established, i.e. a defined benefit to the parents or wife and the remainder to the fireman's other heirs. There is no basis to conclude that the widow or parents were intended to take twice, i.e. as a designated recipient and as an heir at law.

Under the opinion outlined above, only the firefighter's children would be entitled to a refund of monies and the children of this wife would not be entitled to take a share as heirs of their deceased mother.

Section C. POLICEMEN'S ANNUITY AND BENEFIT FUND

DEATH BENEFIT FUND— PROCEDURE FOR AWARD

*(Superintendent of Police—P. M. S.—
May 31, 1974)*

We acknowledge receipt of your communication with respect to the above noted matter and the same has been assigned to the undersigned for consideration and response.

Chapter 22 of the Municipal Code of Chicago provides for the establishment of a Policemen's and Firemen's Death Benefit Fund for those members killed while in the performance of their duty. Section 22-3, thereof, establishes the composition of the Board authorized to administer this Fund; Section 22-4, thereof, sets forth the duties of the Superintendent of Police and Fire Commissioner with respect to the submission of a detailed report to the Board on the incident involved; and Section 22-5, thereof, sets forth the circumstances when such award shall be payable.

Mrs. Cullotta is requesting, basically, a decision from the Board of the Policemen's and Firemen's Death Fund with respect to whether-or-not she and her children are entitled to the death award provided for in Chapter 22 of the Municipal Code. It is our opinion that this request should be called to the attention of the Board; that your office should submit to the Board a report on the incident as set forth in Section 22-4 of the Municipal Code; and that the Board render a decision on the matter.

The letter sent to you points out that the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago held in effect that Patrolman Cullotta was killed in the line of duty. It is our opinion that this decision is not of necessity binding upon the Board of the Policemen's and Firemen's Death Fund since the Pension Fund and City of Chicago are separate corporate entities. However, in view of the fact that the Retirement Board did find in her favor there is undoubtedly information or witnesses mentioned in their file and administrative record which should be looked into in preparation of your investigatory report to the Board.

If our office can be of any further assistance to you in this matter we shall be happy to be of service.

EFFECT OF COERCED DIVORCE

(Policemen's Annuity and Benefit Fund, Executive Director—P. M. S.—June 17, 1974)

Enclosed please find a copy of the Court Order entered by Judge William H. Ellsworth of the Circuit Court for the 16th Judicial Circuit of the State of Illinois on May 15, 1974. As you are aware the plaintiff, Clara Witt, followed the procedure set forth in Section 5-146(e) of Article 5 of the Illinois Pension Code, and the Fund was made a party defendant to this action. Our office did appear at the hearing on behalf of the Fund when this matter was heard by the Court in Geneva, Illinois.

The Court based its Order on its finding that the evidence showed Mr. Witt coerced plaintiff into getting a divorce, and that she only did so out of fear of the consequences of not doing so. In addition thereto, the Court also indicated it was influenced by the fact that plaintiff lived with Mr. Witt as his wife for over thirty years,—from before he was a policeman until after he retired,—and that she did not stand to gain anything, and did not gain anything by the divorce. It is my opinion that the Court also felt that since Mr. Witt died of cancer within a year of the divorce, that his actions may have been motivated for some reason by his suspicion or knowledge of his illness.

Our office has reviewed this matter and determined that an appeal would be unavailing. Accordingly, we recommend that when Mrs. Witt makes application for an annuity, that the same be processed as though no divorce had been obtained pursuant to the legal effect of the Order of Judge Ellsworth.

AGE REQUIREMENT

(Executive Director, The Retirement Board of the Policemen's Annuity and Benefit Fund—T. H.—April 24, 1975)

In your letter of March 13, 1975 you requested an opinion as to whether Mr. Eugene Kostelnak, a retired member of the fund, is entitled to a \$250.00 per month, life annuity pursuant to Section 5-167.2 of Chapter 108½ of the Illinois Revised Statutes of 1973. This provision states in part that to be eligible for this \$250 per month stipend the policeman must have:

“... retired from the service, before September 1, 1967, at age 50 or over with 20 or more years of service, and be entitled to an annuity on 7/1/73...”

Mr. Kostelnak, who was born November 11, 1923, was 43 years of age when he withdrew from service in May of 1967. Arguably, the “age 50 or over” wording of the statute is ambiguous enough to presently include Mr. Kostelnak. It is clear however, from Chap. 108½, sec. 5-132, that the added condition that he “be entitled to an annuity on 7/1/73” has not been met, since attainment of age 50 is a prerequisite to such entitlement, and Mr. Kostelnak was not yet 50 years of age on 7/1/73.

It is our opinion that Mr. Kostelnak is not entitled to the annuity described in the pertinent statute.

REAPPOINTED POLICE SURGEON

(Executive Director, The Policemen's Annuity and Benefit Fund—P. M. S.—May 8, 1975)

We are in receipt of your communication with respect to Dr. Anthony Cesare and the same has been assigned to the undersigned for consideration and response.

Your communication points out that Dr. Cesare had been a Civil Service Police Surgeon and that he retired on January 7, 1975 due to the fact that he became sixty three years of age; that on February 20, 1975 he was granted a life annuity from your Fund retroactive to the date of his retirement. That your Fund was subsequently informed that he had been reappointed as a temporary police surgeon on a part time basis and paid for his services at an hourly rate; and that your Fund then suspended his pension because of his reappointment. You desire an opinion from our office with respect to whether Section 5-159 (b) of the Illinois Pension Code, Chapter 108½, Illinois Revised Statutes, is applicable to Dr. Cesare.

Section 5-109 of the Illinois Pension Code defines the term "Policeman" and provides a pertinent part as follows:

"5-109. § 5-109. Policeman. "Policeman" (a) An employee in the regularly constituted police department of a city appointed and sworn or designated by law as a peace officer with the title of policeman, policewoman, chief surgeon, police surgeon, police dog catcher, police kennelman, police matron, and members of the police force of the police department;

It is evident by the specific inclusion of the position of Police Surgeon in the above cited section that Dr. Cesare is a policeman within the meaning of the Illinois Pension Code.

Section 5-159 (b) of the Illinois Pension Code provides as follows:

"(b) If a policeman re-enters services after 63, payments of pension or annuity previously granted shall be suspended. When he again withdraws, payments upon such pension or annuity be resumed. However, the payment of the pension or annuity shall not be suspended if re-entry into service is for the purpose of serving on a part time basis as a street crossing guard. If he dies while in service, his widow shall receive the amount of any annuity previously fixed for her."

It is our opinion that Dr. Cesare cannot be employed as a police surgeon on a part time basis and receive his pension from your Fund based upon his prior service as a Civil Service Police Surgeon. The above cited Section makes a specific exemption for street crossing guards to re-enter the service of the Police Department in order to serve on a part time basis. This exemption, however, was not extended by the General Assembly to cover the position of police surgeon. A common principle of statutory construction is that the mention of one or several things in a statute excludes other things not enumerated therein. *People v. Criswell*, 12 Ill. App. 2d 102. Also in the case of *Kelly v. Retirement Board*, 292 Ill. App. 390, the Court noted that a fireman could not receive a pension from the Firemen's Annuity & Benefit Fund while in the service of the Fire Department and the same rationale would be applicable to this situation.

It should be noted that if the police department has vacancies in the position of police surgeon and there are no civil service police surgeons available to

fill these positions, it would be permissible for Dr. Cesare to fill such position as a temporary appointee on essentially the same employment terms he held the position as a civil service employee. However, if he were to be appointed in such a manner no further pension deductions should be taken from his salary in view of the fact that section 5-128 of the Illinois Pension Code fixes his annuity as of the time he reaches sixty-three years of age.

It should also be noted that if Dr. Cesare were to obtain employment with a department of the City of Chicago other than the Police Department he would still be entitled to his annuity from your Fund while performing this service. See *Kelly v. The Fireman's Annuity and Benefit Fund of Chicago*, 292 Ill. App. 390; 24 Op. Corp. Couns. 175, 189.

SURVIVING SPOUSE DEATH BENEFIT CLAIMS

(Chairman, Finance Committee—P. M. S.—
November 1, 1976)

In the above entitled case the Plaintiff, the widow of a deceased police officer, is seeking to obtain the benefits provided for in Chapter 22 of the Municipal Code as the result of the death of her husband on or about November 1, 1975. The Plaintiff has filed a Motion for Summary Judgment in this case on the theory that the determination made by the Board of Trustees of the Policemen's Annuity and Benefit Fund of Chicago that her husband died from injuries suffered in the performance of his duties is binding upon the Trustees of the Policemen's and Firemen's Death Benefit Fund.

Our office is contesting said motion because it is our opinion that due to the fact the Pension Fund and the City of Chicago are separate municipal corporations, the Pension Fund should not be considered in privity with either the City of Chicago or any of its departments, agencies or employees. It should be noted that the case law would appear to be supportive of the position of the Plaintiff. See *Dempsey v. City of Harrisburg*, 3 Ill. App. 3d 696; *McKinney v. City of East St. Louis*, 39 Ill. App. 2d 137. A hearing on the Motion for Summary Judgment is set for December 14, 1976 and the Court will probably render its decision on that date.

It is our understanding that the Trustees of the Death Benefit Fund have not as yet considered the matter of whether or not Mrs. Barnes is entitled to the benefits she is seeking. In view of the fact that an appeal may be taken by whichever party loses this issue, it is our feeling that it would be advisable for the Trustees to make a determination with respect to the entitlement of Mrs. Barnes to benefits prior to the scheduled court date. It may be that there is no actual controversy in the matter. Also the Board of Trustees of the Policemen's and Firemen's Death Benefit Fund would have to consider the matter if we prevail on the summary judgment issue.

If the Trustees elect to pursue this course of action it would also be our recommendation that Mrs. Barnes be advised that she may submit to the Trustees whatever material she wishes to have the Trustees consider when they decide the matter. This procedure would, in our opinion, afford applicants for benefits due process of law, which under the rationale of the Supreme Court in *Arnett v. Kennedy*, 416 U.S. 134, they would be entitled to even though the enactment granting them these benefits does not so provide.

It would be appreciated if you would inform our office of any action you take on this matter.

CONVICTION FOR DUTY RELATED
FELONY

(Executive Secretary, *Policemen's Annuity and Benefit Fund*—P. M. S.—March 9, 1979)

We acknowledge receipt of your communication with respect to Section 5-227 of the Illinois Pension Code, Chapter 108½, Illinois Revised Statutes. We have been waiting for the decision of the Illinois Supreme Court in the case of *Kerner v. State Employees Retirement System of Illinois* to ascertain what bearing it may have had on the issue you present. The Illinois Supreme Court has just recently issued its opinion and denied the subsequent request for a rehearing.

Your communication points out that Robert Shanahan and Howard Goodrich were police officers of the City of Chicago for some time prior to 1955 and members of your Fund during their entire service with the Police Department; That in 1972 they were convicted of a duty related felony and subsequently applied for an annuity from your Fund based upon their years of service; that these applications for annuities were denied by the Retirement Board of your Fund based upon Section 227. The applicants contested this decision in Court and the Appellate Court held they were entitled to their annuity since they were members of the Fund prior to the enactment of the felony forfeiture Statute. Your Fund points out that some other members are in positions essentially the same as Mr. Shanahan and Mr. Goodrich and you request our advice as to whether the Court's opinion in *Shanahan, et al v. Policemens Annuity and Benefit Fund of Chicago*, 43 Ill. App. 3rd 543 would control those situations.

Section 5-227 of the Illinois Revised Statutes provides as follows:

"None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his service as a policeman.

None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony while in receipt of disability benefits.

This section shall not operate to impair any contract or vested right heretofore acquired under any law or laws continued in this Article, nor to preclude the right to a refund.

All future entrants entering service subsequent to July 11, 1955, shall be deemed to have consented to the provisions of this section as a condition of coverage."

In *Kerner v. State Employees Retirement System* the Supreme Court of Illinois sustained the concept of annuity forfeitures for a person convicted of a duly related felony against numerous constitutional arguments. The Supreme Court did not address itself to the last paragraph of the Statute and thus did not directly affect the authority of the Shanahan case. However, the Supreme Court did note on several occasions, when ruling on other issues in that case, the fact that Appellant Kerner did become a member of the Fund after the felony conviction Statute was enacted.

In *Shanahan, et al v. Policemen's Annuity and Benefit Fund, et al*, the Court stated:

"The threshold issue before this Court upon which plaintiff's case rests is whether Section 5-227 of the Policemen's Annuity Act is applicable to deny

their pension claims. *We hold that the section does not apply to policemen who entered service prior to July 11, 1955.* Since both plaintiffs were members of the police department prior to that date, the section does not operate to bar the pension claims in the instant case." (emphasis added)

While it is true that only Mr. Shanahan and Mr. Goodrich were parties in the above named suit it is apparent from the underscored language in the above unanimous opinion that the Appellate Court felt it was equally applicable to "policemen who entered service prior to July 11, 1955." It is therefore, our opinion that this decision of the Appellate Court would control your determination in factual situations identical to that set forth therein.

RETROACTIVE APPLICATION— FELONY FORFEITURE STATUTE

(Executive Secretary, Policemen's Annuity and Benefit Fund—P. M. S.—March 9, 1979)

We acknowledge receipt of your communication with respect to Section 5-227 of the Illinois Pension Code, Chapter 108½, Illinois Revised Statutes. We have been waiting for the decision of the Illinois Supreme Court in the case of *Kerner v. State Employees Retirement System of Illinois* to ascertain what bearing it may have had on the issue you present. The Illinois Supreme Court has just recently issued its opinion and denied the subsequent request for a rehearing.

Your communication points out that Robert Shanahan and Howard Goodrich were police officers of the City of Chicago for some time prior to 1955 and members of your Fund during their entire service with the Police Department; that in 1972 they were convicted of a duty related felony and subsequently applied for an annuity from your Fund based upon their years of service; that these applications for annuities were denied by the Retirement Board of your Fund based upon Section 227. The applicants contested this decision in Court and the Appellate Court held they were entitled to their annuity since they were members of the Fund prior to the enactment of the felony forfeiture Statute. Your Fund points out that some other members are in positions essentially the same as Mr. Shanahan and Mr. Goodrich and you request our advice as to whether the Court's opinion in *Shanahan, et al. v. Policemen's Annuity and Benefit Fund of Chicago*, 43 Ill. App. 3rd 543 would control those situations.

Section 5-227 of the Illinois Revised Statutes provides as follows:

"None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his service as a policeman.

None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony while in receipt of disability benefits.

This section shall not operate to impair any contract or vested right heretofore acquired under any law or laws continued in this Article, nor to preclude the right to a refund.

All future entrants entering service subsequent to July 11, 1955, shall be deemed to have consented to the provisions of this section as a condition of coverage."

In *Kerner v. State Employees Retirement System* the Supreme Court of Illinois sustained the concept of annuity forfeitures for a person convicted of a duty related felony against numerous constitutional arguments. The Supreme Court did not address itself to the last paragraph of the Statute and thus did not directly affect the authority of the Shanahan case. However, the Supreme Court did note on several occasions, when ruling on other issues in that case, the fact that Appellant Kerner did become a member of the Fund after the felony conviction Statute was enacted.

In *Shanahan, et al v. Policemen's Annuity and Benefit Fund, et al*, the Court stated:

"The threshold issue before this Court upon which plaintiff's case rests is whether Section 5-227 of the Policemen's Annuity Act is applicable to deny their pension claims, *We hold that the Section does not apply to policemen who entered service prior to July 11, 1955.* Since both plaintiffs were members of the police department prior to that date, the section does not operate to bar the pension claims in the instant case." (emphasis added)

While it is true that only Mr. Shanahan and Mr. Goodrich were parties in the above named suit it is apparent from the underscored language in the above unanimous opinion that the Appellate Court felt it was equally applicable to "policemen who entered service prior to July 11, 1955." It is therefore, our opinion that this decision of the Appellate Court would control your determination in factual situations identical to that set forth therein.

Section D. LABORERS' AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT FUND

DEATH "IN SERVICE" REQUIREMENT—WIDOW'S ANNUITY

(Fund Secretary—P. M. S.—July 2, 1974)

We are in receipt of your communication requesting our opinion with respect to whether Mr. Leonard F. McCurrie "died in or out of the service." Your communication also points out that his widow has applied for an annuity for herself and her two minor children.

Our understanding of the facts in this matter is as follows: Mr. McCurrie commenced his employment with the City of Chicago in 1950 and became a member of your Fund; that although he had some broken service he worked the majority of the time until he was laid off in 1962 when his department reduced their work force; that during the years 1966 through 1968 numerous vacancies in his Civil Service position occurred but he waived his right to be reinstated; and that since 1968 his name continued to remain on the reinstatement register of the Civil Service Commission until he died.

Article 11 of Chapter 108½ of the Illinois Revised Statutes only provides for the payment of a widow's annuity wherein an employee has either died in the service (Sections 11-138 and 11-139) or where a withdrawal from service by the deceased employee had taken place (Sections 11-140 through 11-143). It is apparent, therefore, that when a member of the Fund dies he would necessarily have to be considered as having been in one or the other of these categories in order to compute the annuity of his widow.

Section 11-120 of Article 11 of the Illinois Pension Code defines the terms "withdrawal from service" and "withdrawal" as the "discharge or resignation of an employee." Once a discharge or resignation becomes effective an employee loses all his standing and rights with respect to his employment position and he is completely severed from it. Mr. McCurrie, however, was not discharged nor did he resign. By remaining on the reinstatement register of the Civil Service Commission he continued to have the substantial employment right to be reinstated to his position provided a vacancy existed.

Based upon a consideration of the above noted facts it is our opinion that Mr. McCurrie had not withdrawn from service at the time of his death, and that he should, therefore, be considered as having died in service. It is also our opinion that such a construction is in accord with the pronouncement frequently made by Illinois Courts that pension laws should be liberally construed in favor of those sought to be benefited.

EVIDENCE OF DISSOLUTION OF PRIOR MARRIAGE

*(Fund Executive Secretary—P. M. S.—
September 26, 1974)*

At the meeting of the Retirement Board on September 24, 1974, the above noted matters were discussed and an opinion was requested from our office with respect to what action the Retirement Board should now take.

Our understanding of the facts in this matter is as follows:

That Arthur Dukes was a member of this Fund and died in October of 1973; that sometime, thereafter, Malinda Dukes made application with the Retirement Board for a widow's annuity; that Malinda Dukes was unable to submit to the Retirement Board any documents showing the dissolution of her prior marriage to Mr. Albert Jones; that Mr. Dukes had stated on his information sheet that his wife's maiden name was Linda Peoples and that she was born on November 19, 1922; that in view of the fact the Retirement Board had not acted on her application, Malinda Dukes filed the above entitled suit seeking to obtain a declaratory judgment with respect to her right to obtain a widow's pension; and that the reason the Retirement Board had not granted her a widow's annuity at the time this action was filed was due to the lack of evidence with respect to the dissolution of her first marriage and the confusion with respect to the names "Linda" and "Malinda."

An evidence deposition of Malinda Dukes was taken by the undersigned. Mrs. Dukes testified that her maiden name was Malinda Peoples and that she was born on November 19, 1922; that she often used the name Linda rather than the name Malinda. In support of this statement she offered into evidence a policy issued by the Chicago Title and Trust Company to "Arthur Dukes and Linda Dukes, his wife, as joint tenants"; that she married Mr. Albert Jones in 1939 and lived with him until 1948; that he left home hurriedly one evening because he was in some unknown difficulty; that she made attempts to locate him but was unsuccessful and never saw or heard of him after he left in 1948; that his mother informed her that he was dead, but she could not learn any particulars; that she married Mr. Arthur Dukes on October 21, 1951 and lived with him as his wife until he died in October, 1973.

In view of the numerous cases sustaining the validity of the last marriage, and the satisfactory explanation given by Mrs. Dukes with respect to the names

of Linda and Malinda, it is our opinion that the Retirement Board would be justified in granting Mrs. Malinda Dukes a widow's annuity. It would be our suggestion that a copy of Malinda Dukes evidence deposition be made part of your file in this matter.

ADMINISTRATIVE REVIEW— BENEFIT HEARING DECISIONS

*(Retirement Board, Laborers' and Retirement Board
Employees' Annuity and Benefit Fund—
P. M. S.—July 21, 1975)*

Your request for a legal opinion from our office with respect to the proper manner of disposing of disability applications submitted by members of your fund where it appears there may be disputed questions of law or fact has been assigned to the undersigned for consideration and response.

It should first of all be noted that administrative decisions of the Retirement Board are subject to review under the Administrative Review Act by virtue of Section 11-231 of the Illinois Pension Code. A decision of the Retirement Board with respect to the application of a member for disability benefits would clearly be such an administrative decision. It should also be noted that if an applicant feels that the decision of the Retirement Board is not correct and elects to file a Complaint for Administrative Review in the Circuit Court of Cook County contesting the decision, the answer of the Retirement Board to this complaint would basically consist of the administrative record upon which it made its decision. See Chapter 110, Par. 272 (b) Ill. Rev. Stats. It is, therefore, important that the administrative record accurately reflect what transpired and that said record contain the evidentiary basis for whatever decision the Retirement Board has rendered.

It is also important that the applicant be afforded the right to fully participate in the hearing so that he will have an adequate opportunity to attempt to establish his entitlement to the benefits he is seeking.

Section 11-197 of the Illinois Pension Code empowers the Retirement Board to appoint such employees as are necessary. Section 11-198, therefore, empowers the Retirement Board to make whatever rules and regulations it deems necessary for the administration of the fund. It is our opinion that these sections authorize the Retirement Board to employ a hearing officer in order to expeditiously conduct these hearings. It is also our opinion that while a member of the Retirement Board could also conduct these hearings upon passage of a suitable rule or regulation by the Retirement Board, it would be better for someone with legal experience to do so. Any administrative decision made with respect to the approval or denial of the disability benefits sought by an applicant would have to, however, be made by the Retirement Board after it had reviewed the administrative record.

It would be our suggestion that the Retirement Board adopt rules of procedure with respect to these hearings. This would have the salutary effect of insuring that the hearings are conducted in a manner approved by the Retirement Board and to advise the applicant of his rights with respect to participating in said hearing. Enclosed for your consideration is a proposed set of suggested rules of procedure.

CHAPTER IV—RELATION OF CITY WITH OTHER GOVERNMENTS

Section A. FEDERAL RELATIONSHIP

AUTHORITY OF LIQUOR CONTROL COMMISSIONER

*(Whiskey Distilling Company—M. L. R.—
September 4, 1973)*

Your recent communication of August 24, 1973, addressed to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to me for consideration and response. You state that Ezra Brooks Distilling Co. produces fine whiskey in ceramic containers, and you request authorization from the Mayor of the City of Chicago, in the form of a letter, to release your "Veterans of Foreign Wars Bottle" solely in the Chicago area. You further state that such a letter from the Mayor's Office is necessary to comply with existing Federal rules and regulations.

Pursuant to the Illinois Liquor Control Act, (Chapter 43, Illinois Revised Statutes, 1971) the Mayor of the City of Chicago serves as the Local Liquor Control Commissioner for this jurisdiction. With respect to the Mayor's powers as Local Liquor Control Commissioner, Section 112 of Article IV of this Act states as follows:

"Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, other than licenses to manufacturers, importing distributors, distributors, non-beverage users, railroads, airplanes and boats.

1. To grant and or suspend for not more than thirty days or revoke for cause all local licenses issued to persons for premises within his jurisdiction;
2. To enter or to authorize any law enforcing officer to enter at any time upon any premises licensed hereunder to determine whether any of the provisions of this Act or any rules or regulations adopted by him or by the State Commission have been or are being violated, and at such time to examine said premises of said licensee in connection therewith;
3. To receive complaint from any citizen within his jurisdiction that any of the provisions of this Act, or any rules or regulations adopted pursuant hereto, have been or are being violated and to act upon complaint in the manner hereinafter provided;
4. To receive local license fees and pay the same forthwith to the city, village, town or county treasurer as the case may be."

The City of Chicago does not license manufacturers, distillers, or distributors of alcoholic liquors. The Mayor of the City of Chicago, as Local Liquor Control Commissioner, has no control over the actions of these individuals. A request, therefore, for authorization to release your "Veterans of Foreign Wars Bottle" in the Chicago area should be made to the Illinois Liquor Control Commission, Thomas Murphy, Executive Director, which is located at 188 W. Randolph Street in Chicago. Inquiries with respect to sales within a specified

geographical area should be addressed to the State Commission, and not to the Local Liquor Control Commissioner.

FINGERPRINTING REQUIREMENT

*(American Civil Liberties Union—M. L. R.—
December 19, 1973)*

Your recent letter addressed to the Corporation Counsel's Office has been referred to me for reply. You seek clarification of fingerprinting requirements with respect to the manager of a drug store holding a liquor license, and request a copy of a previously published opinion of the Corporation Counsel discussing this matter.

A thorough search of the published opinions of the Corporation Counsel did not reveal the specific opinion you request. However, enclosed please find a copy of an Opinion of the Corporation Counsel, Volume XXIV, pages 300 and 301, entitled "Spouse of an Ineligible Licensee." Also, enclosed is a copy of Article XXVII of the Rules and Regulations of the Illinois Liquor Control Commission, and a copy of Section 120 of the Illinois Liquor Control Act (Chapter 43, Illinois Revised Statutes, 1971). I hope that this information will help clarify your position in this matter.

AUTHORITY TO CONSTRUCT CROSSTOWN EXPRESSWAY

*(Acting Commissioner, Department of Public Works—
R. L. C.—June 12, 1974)*

Attached please find a letter of opinion in form and substance with the recently promulgated regulations affecting the Crosstown Expressway.

I, the undersigned Corporation Counsel of the City of Chicago, have examined the Constitutions of the United States and of the State of Illinois, all pertinent Federal and State laws, and it is my opinion that the City of Chicago has constitutional and statutory authority to embark upon the design, and construction of the Chicago Crosstown Expressway, I-494, and to contract therefor.

It is also my opinion that the City Council of the City of Chicago has the authority to approve any agreement between the City of Chicago and the Federal Government to undertake such a Project and to commit local funding for the same.

AUTHORITY FOR EXPRESSWAY CONSTRUCTION

*(Acting Commissioner, Department of Public Works—
R. L. C.—November 4, 1974)*

The following is submitted in response to the inquiry from Mr. Norbert T. Tiemann, Federal Highway Administrator, dated October 11, 1974, requesting clarification of this office's opinion with respect to the authority of the City of Chicago to plan and construct the Crosstown Expressway.

On December 15, 1970, the electorate of the State of Illinois voted approval of the 1970 Constitution of the State of Illinois. The same was proclaimed law on December 21, 1970, effective July 1, 1971.

The powers of the City of Chicago, a home rule unit, are derived from the 1970 Constitution of Illinois rather than from a specific grant pursuant to legislative enactment. Article VII, section 6(a) of the 1970 Illinois Constitution provides that the City of Chicago is a home rule unit:

"(a) . . . a County which has a chief executive officer elected by the electors of the County and any municipality which has a population of more than 25,000 are home rule units. . . ."

The provision of the 1970 Constitution granting home rule units autonomy in the exercise of their governmental functions set forth in Article VII, section 6(a) states in part:

"except as limited by this section a home rule unit may exercise any power and perform any function pertaining to its government and affairs including but not limited to the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."

The report of the Committee on Local Government to the Constitutional Convention clearly demonstrates the intention of the framers of the home rule provision to grant to home rule units a broad scope of power. (Sixth Illinois Constitutional Convention, Record of Proceedings, Vol. VII at page 1619):

". . . are designed to insure that the specified counties and cities receive directly under the Constitution the broadest possible range of powers to deal with problems facing them and with demands that are made upon them by their residents and by the greater society."

And again in Vol. VII at page 1622:

"Standing alone, the general grant of local powers would be subject to interpretation and possible limitation in important respects by the courts. This danger is especially important in Illinois with its tradition of strict construction of local powers. To avoid this danger, the Committee believes it desirable to specify those basic areas of local power which are most important and which, without question, are included in the more general language of the proposed section."

Consistent with the clear intention of the framers of the Constitution, the Supreme Court of Illinois in *Kanellos v. Cook County*, (1972) 53 Ill. 2d 161, stated at page 166:

"The concept of home rule adopted under the provisions of the 1970 Constitution was designed to drastically alter the relationship which previously existed between local and State Government. Formerly, the actions of local governmental units were limited to those which were expressly authorized, implied or essential in carrying out the legislature's grant of authority. Under the home-rule provisions of the 1970 Constitution, however, the power of the General Assembly to limit the actions of home-rule units has been circumscribed and home-rule units have been constitutionally delegated greater autonomy in the determination of their government and affairs. To accomplish this independence the Constitution conferred substantial powers upon home rule units subject only to those restrictions imposed or authorized therein."

Since the construction of a highway primarily within the boundaries of

the City of Chicago is clearly a proper governmental function in accordance with Article VII, section 6(a), of the Illinois Constitution, the City of Chicago has the authority and power to make the proposed improvement.

The question posed by Mr. Tiemann relative to State statutory authority is inapplicable. The Illinois State legislative enactments were adopted prior to the effective date of the 1970 Constitution and in no way purported to affect home rule constitutional authority. The Supreme Court has consistently held that home rule powers granted pursuant to Article VII, section 6(a), are absolute even to the extent that such exercise conflicts with a prior statute. In *People ex rel Edward Hanrahan v. Thomas Beck*, 54 Ill. 2d 561 (1973), the Court specifically stated at page 565:

"In *Kanellos vs. Cook County*, 53 Ill.2d 161, we held that a home rule county may adopt an ordinance pursuant to its home rule power and thereby supersedes a statute antedating the present Constitution."

In a subsequent ruling the Supreme Court in *Peters v. City of Springfield*, 57 Ill.2d, at page 147:

"In *Kanellos v. County of Cook*, 53 Ill.2d, 161, and *People ex rel, Hanrahan v. Beck*, 54 Ill.2d 561, we approved ordinances adopted pursuant to section 6(a) of Article VII, which were in conflict with existing statutes enacted prior to the effective date of the Constitution. The rationale of those decisions is that a home-rule unit may exercise a power conferred upon it under the provisions of section 6(a), even though such exercise of the power conflicts with a statute enacted prior to the adoption of the 1970 Constitution, unless the power is restricted by either a constitutional provision or appropriate legislative action."

With respect to the power of the City of Chicago to contract with the United States the 1970 Constitution of Illinois is specific. Section 10(a), Article VII, provides in part as follows:

"Units of local government . . . may contract . . . with the United States to obtain or share services and to exercise, combine or transfer any power or function . . . participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to inter-governmental activities."

Although the case law is clear that prior enactments by the General Assembly are not controlling the power to contract with the United States has long been granted to municipalities, Ill. Rev. Stat. (1973) Chapter 29, paragraph 33(a), provides that all municipal corporations are authorized to contract with the United States Government.

With regard to questions concerning method of financing the project, the City of Chicago has four major sources of income: the corporate fund; general obligation bonds; motor vehicle tax fund; and motor fuel tax fund.

The authority of the City of Chicago to tax and incur debt is set forth in Article VII, section 6(a), of the 1970 Constitution as hereinabove set forth. The General Assembly has not acted to limit the amount of debt that a home rule unit may incur pursuant to the authority of the 1970 Constitution, Article VII, section 6(j); therefore, the City of Chicago has no limitation upon its power conferred by authority of the 1970 Illinois Constitution. (*City of Evanston v. County of Cook*, 53 Ill.2d 312; *Jacobs v. City of Chicago*, 53 Ill.2d 421).

The request of Mr. Tiemann made reference to our earlier opinion which cited Chapter 24, Ill. Rev. Stat. 11-61-2 and the definition of "streets." It should

be noted that the definition of streets as defined in the Highway Code is restricted to that particular code; (Ill. Rev. Stat. Chap. 121, paragraph 2-201). It is also to be noted that the preceding section, namely, Ill. Rev. Stats. (1973) Chap. 24, paragraph 11-61-1, gives the right to the corporate authorities to acquire property for streets or *highway* purposes.

"Sec. 11-61-1. The corporate authorities of each municipality may exercise the right of eminent domain by condemnation proceedings in conformity with the provisions of the Constitution and statutes of the State of Illinois for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare including property in unincorporated area outside of but adjacent and contiguous to the municipality where required for street or highway purposes by the municipality."

It is abundantly clear from the case law interpreting the 1970 Illinois Constitutional home rule provisions that the City of Chicago has the authority and power to enter into an agreement with the United States to plan and construct the Crosstown Expressway (I-494).

INTERSTATE TRANSPORTATION OF SCHOOL CHILDREN

*(Indiana School Superintendent—B. R.—
November 6, 1974)*

Your recent letter to our Mayor, Honorable Richard J. Daley, has been referred to the writer for reply. You inquire as to the ICC rules and regulations concerning the movement of school children transported in school buses from Indiana into Chicago for educational field trips. By your designation of the ICC, we assume that you are referring to the Interstate Commerce Commission and not to the Illinois Commerce Commission since the said movement is between the States of Indiana and Illinois.

The writer has personally discussed your problem with representatives of the Interstate Commerce Commission. I have been advised that the Commission would not be involved in your activity if the same was limited to the transportation of school children, with accompanying chaperon, in school buses.

Like you, we also believe that there is a misunderstanding on the part of the Interstate Commerce Commission regarding the subject matter of your complaint. Therefore, it is my recommendation that you contact Mr. Edward Greenberg, Regional Counsel, Interstate Commerce Commission, Bureau of Enforcement, 219 South Dearborn Street, Chicago, Illinois, 60604, telephone number Area Code 312-353-6196. Mr. Greenberg has assured me that he will work with you to attempt to resolve any difficulties which might exist relative to the transportation of your school children into the City of Chicago.

Let me assure you that it is the policy of our Mayor to encourage educational field trips into Chicago from other neighboring States.

POLICY OF COOPERATION

*(Commissioner, Department of Streets and Sanitation—
H. F. W.—July 5, 1974)*

We wish to acknowledge receipt of your letter of June 27, 1974, in which you request advice and direction as to how you should proceed in regards to the correspondence from the United States Environmental Protection Agency as it deals with the performance of the City Incinerators and furnishing per-

formance data including stack emission tests to said federal agency. We have also reviewed your letters of May 20, 1974 and June 5, 1974, along with the correspondence from the United States Environmental Protection Agency dated February 28, 1974, May 9, 1974 and May 29, 1974.

You attached a set of instructions for completing the air pollution emission report, copies of Rules 203 thru 206 of the Illinois Air Pollution Regulations, a Federal Compliance Schedule and Air Pollution Emission Report Forms, which we herewith return to you.

Under the provisions of the Clean Air Act, 42 USC 1857, the United States Environmental Protection Agency has promulgated Federal Compliance schedules for stationary sources in Illinois. The forms attached to your letter of June 27, 1974, were prepared pursuant to said federal program and under the authority of Section 114(a) of the Act (42 USC, § 1857C-9), the City of Chicago is required to complete the forms and return them to the United States Environmental Protection Agency.

While it is true that the United States Environmental Protection Agency has not of this date preempted the field of air pollution control, it should be the policy of the City of Chicago to cooperate with the Enforcement Division of the United States Environmental Protection Agency so as to enable them to evaluate and set reasonable and feasible requirements for stationary sources of potential air pollution emissions. It is the recommendation of this office that the Department of Streets and Sanitation complete the federal forms submitted to them and forward them on to the proper governmental agency.

AIR CARGO RATE DISCRIMINATION

*(Commissioner of Aviation—R. L. H.—
February 5, 1975)*

Forwarded herewith for payment is a statement from the firm of Belnap, McCarthy, Spencer, Sweeney & Harkaway in the sum of \$541.42 representing the City of Chicago's share of the legal expenses incurred in successfully opposing a Petition for Writ of Certiorari in the U.S. Supreme Court in the above entitled matter.

To review this matter, the City of Chicago and the Chicago Association of Commerce and Industry intervened in the above cited matter before the Civil Aeronautics Board on the ground that air cargo rates over the North Atlantic were unjustly and illegally discriminatory against shippers and importers in Chicago and unduly favorable to their counterparts in New York.

A CAB decision was finally rendered finding that such discrimination did in fact exist and setting forth that the proper rates to be charged were to be based on an equal charge per mile flown for all gateways to the North Atlantic. This decision was appealed by Maryland and Virginia to the U.S. Court of Appeals for the 4th Circuit which sustained the Board decision. We intervened in said matter in support of the Board and believe that such intervention was an important factor in obtaining the favorable decision. Mr. Spencer's firm also represented the Detroit and Chicago parties there and the statement for those services have been paid.

Maryland and Virginia petitioned the U.S. Supreme Court for a Writ of Certiorari since they were dissatisfied with the 4th Circuit's decision sustaining the Board and it was determined that intervention by the Detroit and Chicago parties in opposition to such Petition was necessary.

The U.S. Supreme Court, on December 9, 1974, denied the Petition for Certiorari and, therefore, the decision of the Board is now absolutely final and binding and shippers and importers through Chicago-O'Hare International Airport are paying the same rate per mile flown for all cargo as is paid by shippers and importers through New York.

Please process payment of the attached statement at your earliest convenience.

AUTHORITY TO CONTRACT WITH FEDERAL AGENCY

*(Acting Commissioner, Department of Streets and
Sanitation—H. A. T.—June 12, 1975)*

Your Department has submitted a proposed Agreement between the City of Chicago, Bureau of Forestry, Department of Streets and Sanitation, and the U. S. Department of Agriculture, Forestry Service, for our review. The proposed Agreement provides in essence that a Research Program be instituted in regard to the utilization of the dead wood material being removed each year by the Bureau of Forestry from City areas. You ask our opinion of the legality of said document.

The Bureau of Forestry, as such, was created by City Council ordinance adopted December 16, 1969 as a subsidiary of the Department of Streets and Sanitation. (Municipal Code, Chap. 14-22 through 14-24).

The ordinance authorizes said Bureau to manage, control and preserve City trees and plant life in the City's Beautification Program. Within the four corners of said ordinance is implicit the duty to so operate said forestry program as to effectuate savings to the City. We are informed that the utilization of the dead wood annually removed by the City would reduce disposal expenditures and bring in income.

The Home Rule powers of the City under Article 7, Section 6 of the Illinois Constitution of 1970 are sufficiently broad to give the City authority to conduct the proposed program through the Board of Forestry.

We have reviewed the terms of the proposed contract. Although the contract is tenuous, nevertheless, it provides consideration in the mutual promises of the parties, indicates a general scope of services and has the necessary parties.

It is our opinion that said document, when approved by the City Council, and duly executed by authorized officials of the City and the Federal Government, would constitute a legal agreement between the Parties thereto.

ELIGIBILITY FOR FEDERAL MASS TRANSPORTATION GRANTS

*(Commissioner, Department of Public Works—
J. R. P.—January 6, 1976)*

Pursuant to your request dated December 26, 1975, we forward herewith two Opinions of Counsel for submission with the State and Federal Mass Transportation Applications for funding Phase II of the Transit Security Project.

I, the undersigned, am an attorney, licensed by and duly admitted to practice law in the State of Illinois and am an Attorney for the City of Chicago. In this capacity my opinion has been requested concerning the eligibility of the City of Chicago for grant assistance under the terms of the Transportation Bond Act (Illinois Revised Statutes, 1973, Chapter 127, Section 701 et seq.) and Section 49.19 of the "Civil Administrative Code of Illinois" (Illinois Revised Statutes, 1973, Chapter 127, Section 49.19). Please be advised that:

1. The City of Chicago is a municipality under the laws of the State of Illinois, and is eligible to apply for, receive and use State grant funds under the foregoing statutes.
2. There are no provisions in the charter of the City of Chicago or in the statutes of the State of Illinois, the United States of America, of any municipal or other local ordinances that preclude or prohibit the City of Chicago from making application for or contracting with the State of Illinois for the purpose of receiving a mass transportation capital grant and using such grant in accordance with the purpose set forth in the application and applicable State and local laws and ordinances.
3. The undersigned has no knowledge of any pending or threatened litigation, in either Federal or State courts, which would adversely affect this application, or which seeks to prohibit the City of Chicago from applying to or from contracting with the State of Illinois for the purpose of receiving a State capital improvement grant.

Based upon the foregoing, I am of the opinion that the City of Chicago is eligible as a recipient under the provisions of the statutes and ordinances cited herein and that it is fully empowered and authorized to apply for and accept a mass transportation capital grant from the Illinois Department of Transportation, and the Federal Urban Mass Transportation Administration.

EXPERIMENTAL HOUSING REHABILITATION FINANCING

*(Acting Executive Director, Model Cities—
H. A. T.—April 13, 1976)*

You have requested our review of specific terms of a proposed contract with Community Services and Research Corporation (CSRC). The issues raised were as follows:

1. Is the concurrence of the Federal Government required to use the second-year interest, on the Grant provided for this Program, for administrative costs.
2. Is HUD's concurrence required in the Program's disposition of property obtained in whole or in part, through Federal funds.
3. Is the Treasury Department regulation requiring expenditure of funds, within three days from drawing the funds, complied with.

The answer to question 1 may be found in Volume 40, Federal Register No. 3, Part 5, Sec. 570.506 thereof, referring to interest on Community Development Block Grants.

"Sec. 570.506 Program Income:

- (c) All other program income earned during any period under which the recipient is assisted under this Part, including proceeds from the disposition of real property, payments of principal and interest on rehabilitation loans, and interest earned on revolving funds, shall be retained by the recipient and shall be added to funds committed to the program and be used in accordance with the provisions of this part."

We concur in your position that direct operational costs of the Program may be paid out of the interest from said funds and are not general administrative costs.

We are advised that question 2, as to the disposition of property acquired through the Program, has been satisfactorily answered by correspondence with HUD.

In regard to question 3, we also agree with your construction of the Treasury regulation. You advise that a Trust is being created at the Chicago Title & Trust Company which will provide for the placement of Program funds obtained from the Federal Government in said Trust, immediately upon receipt of the same. The principal of the Trust shall be used exclusively for the payment of costs incurred by CSRC in this Program upon the written direction of CSRC. The basic control of the expenditure of funds in said Trust will be relinquished by your Agency and granted to CSRC.

Inasmuch as you will place the Treasury Funds received into the Trust within the time required by Treasury regulation and relinquish your control of the same (control of expenditures passing to CSRC), we deem you have complied with the Treasury regulation.

AUTHORITY TO ENTER FEDERAL GRANT AGREEMENT

*(Acting Commissioner, Department of Streets and
Sanitation—H. A. T.—September 29, 1976)*

The Bureau of Forestry proposes to make application to the Federal Government in connection with an 80/20 (Federal/City) cost sharing three year forest management and utilization program.

The U. S. Forest Service (Department of Agriculture) has requested the execution of its form AD 623 and your office has requested our opinion as to the legality of said form as it pertains to the City of Chicago's commitment.

Basically said form is factual in nature until it reaches Part V—Assurances. The assurances cover the same ground as the City has given the Federal Government on other occasions. In addition, the City Council of the City of Chicago has the authority to direct its chief executives and administrators to execute and file an application for said grant and to enter into a contract for the same.

The Home Rule powers of the City, under Article 7 Section 6 of the Illinois Constitution of 1971, are sufficiently broad to give the Federal Government the assurances it requires in its form AD 623 and to enter into this proposed program.

DISCLOSURE OF RECORDS TO FEDERAL AGENCY AND THE PRIVACY ACT

*(Acting Superintendent of Police—R. L. T.—
December 14, 1977)*

I am in receipt of your letter of November 1, 1977 in which you request an opinion of the Corporation Counsel concerning the Police Department's participation in the United States Department of Transportation National Accident Sampling System. Enclosed with your letter is a letter to the Chief of the Traffic Bureau of the Chicago Police Department from Frank Berndt, Acting Chief Counsel of the United States Department of Transportation. The specific question was whether the utilization of Chicago Police Department records which are prepared in connection with traffic accident investigations would conflict with any provisions of the Privacy Act of 1974 (5 U.S.C. § 552(a) et seq.).

It is the opinion of this office that participation of the Police Department and the use of the Department's traffic accident investigation reports in the National Accident Sampling System would not be in conflict with the provisions of the Privacy Act, nor with Illinois statutes, or Chicago municipal ordinances.

The Federal Privacy Act provides for cooperation between agencies in this manner in Section (b) (7) which allows disclosure of information from one agency.

to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought. (5 U.S.C §552(a) (b)(7)).

In regard to the information within the traffic reports which refers to specific individuals, the letter from the Acting Chief Counsel of the United States Department of Transportation states that "once a file is ready for entry into the system of records, all identifying particulars are removed so that the NASS, itself, does not contain any information concerning individuals."

There are, therefore, no legal impediments preventing your department from cooperating with NASS in this matter. If this office may be of any further assistance, please contact us.

Section B. CHICAGO PARK DISTRICT

AUTHORITY TO CONSOLIDATE PARK DISTRICT WITH CITY

(R. P.,—R. F. F.—September 4, 1979)

This is in answer to your letter of August 23, 1979, requesting the views of this office concerning the legal steps necessary to merge the Chicago Park District with the City of Chicago.

The Chicago Park District is a creature of statute. The General Assembly established the District in 1933 by merging the 22 separate predecessor park districts. (Ill. Rev. Stat. 1977, Ch. 165, par. 333.1 et seq.) That statute and subsequent laws made provision for the assumption of pre-existing debt by the newly-formed Chicago Park District.

I have examined these statutes, the 1970 Constitution and the proceedings of the 1969 Constitutional Convention. After a thorough analysis of those documents and the law, I have concluded that only the General Assembly has the power to permit a consolidation of the Chicago Park District and the City of Chicago. I reached this conclusion not only because the Park District was originally created by statute, but because the Constitution of 1970 contains a provision expressly requiring enactment by the General Assembly of consolidation laws before any such consolidation may occur.

That provision, Article VII, Section 12 of the Illinois Constitution states: "The General Assembly shall provide by law for the transfer of assets, powers and functions, and for the payment of outstanding debt in connection with the formation, consolidation, merger, division, dissolution and change in the boundaries of units of local government."

At the present time the General Assembly has not yet "provided by law" for any such transfer. Without the statutory machinery for such transfers or mergers, it is apparent that a consolidation of the district and City of Chicago may not take place.

I am guided in this conclusion by the recent Illinois Supreme Court case of *Oak Park Federal Savings v. Village of Oak Park*, 54 Ill.2d 200 (1973). There, the Village of Oak Park attempted to use its home rule authority to create special service districts. The Constitution, however, (Article VII, Section 6(1)) permitted home rule units to establish such districts "in the manner provided by law." At the time Oak Park attempted to create such special service districts, the General Assembly had not provided the manner for doing so. The Illinois Supreme Court held that without the General Assembly's establishment of the machinery for doing so, a home rule unit was not permitted to create special service districts.

Section 12 of Article VII contains similar language requiring that the General Assembly "provide by law" the machinery for merger of governmental units. Because of the similarity in language of these sections of the Constitution, I concluded that the City of Chicago is not authorized under the home rule provisions of the Constitution to consolidate the Park District with itself without state statutory authorization.

This office is considering the kind of legislation that should be introduced in the General Assembly to accomplish the merger of the Chicago Park District and the City of Chicago.

If you have any further questions on this subject, I would be happy to answer them.

Section C. CHICAGO HOUSING AUTHORITY

GRANT OF AUTHORITY—CHICAGO
FAIR HOUSING ORDINANCE

*(Director, Commissioner on Human Relations—
M. J. P.—October 3, 1974)*

This is in response to your letter requesting an opinion about the effect on the Chicago Fair Housing Ordinance of S.B. 1502.

If the City's grant of power arises from Illinois Revised Statutes, 1973, Chap. 24, Sec. 11-11.1-1 (hereafter the Cities and Villages Act) as well as under Article III, Section 6 of the Illinois Constitution of 1970 (hereafter the Home Rules Provision) and it is our position that it does, then the Chicago Fair Housing Ordinance is "saved" by the language in Amendment 5 to S.B. 1502 which reads "Nothing in this Section shall be construed to affect or impair the validity of Section 11-11.1-1 of the Illinois Municipal Code."

The Chicago Fair Housing Ordinance, as amended on June 6, 1973, accomplishes substantially the same ends that the Cities and Villages Act allow. To those who would argue that Section 1 of that Ordinance indicates a grant of power arising solely from the Home Rule Provision, it must be said that the previous Fair Housing Ordinance never specifically stated that the grant of authority arose under the Cities and Villages Act, but in fact such was the case. So, the statement in Section 1 of the Ordinance as amended in 1973 that it is "amended pursuant to the provisions of the Illinois Constitution of 1970" does not preclude the assertion that the authority to create the Ordinance arose from the Cities and Villages Act as well.

Though the Chicago Fair Housing Ordinance provides sanctions for those who discriminate on the basis of sex and marital status, two classes not mentioned specifically in the Cities and Villages Act, the intent of the Act encompasses such discrimination.

Furthermore, from our reading of S. B. 1502 which is an amendment to the Real Estate Brokers and Salesman License Act, the intent of the legislature was to create a Real Estate Recovery fund to which aggrieved citizens could apply for relief, and which would be a function exercised by the State exclusively.

Their intent seems to have been to prevent Home Rule Units from opting out of their plan. Their intent, was not, we feel, to preclude individual municipalities, Home Rule Units or otherwise, from creating or continuing their own Fair Housing Commissions in addition to the Real Estate Recovery Fund.

Therefore, S. B. 1502 will have no effect on the Chicago Fair Housing Ordinance, because S. B. 1502 specifically states that the legislature intended not to impair such ordinances.

HOMESTEADING PROGRAM

*(Commissioner, Department of Urban Renewal—
H. A. T.—August 12, 1975)*

I am an Attorney at Law duly licensed to practice in the State of Illinois. As an Assistant Corporation Counsel of the City of Chicago, I have duly reviewed the proposal of the Federal Department of Housing and Urban Development to transfer specified HUD properties located in the City of Chicago to the City, for the purpose of implementing the provisions of Section 810 of the Housing and Community Development Act of 1974, in connection with HUD's Homesteading Demonstration Program.

Said proposal requires an Opinion of Counsel concerning:

1. The powers of the City of Chicago and its designated Agency, the Department of Urban Renewal, to implement a local Homesteading Program as required by Section 810(b) of the above Act in accordance with applicable State and Local law.

- (a) To accept transfers from HUD, without payment, of Secretary-held real property.
- (b) To conditionally convey said property to an individual or family without any consideration, except to occupy said premises as a residence and to renovate the same to code standards within 18 months after occupancy.

The Urban Renewal Consolidation Act of 1961 adopted by the Illinois Legislature authorized municipalities to create Departments of Urban Renewal. Pursuant to said Act, the City Council of Chicago created a Department of Urban Renewal effective as of January 1, 1962. Various sections of said Act give the City, through its Department of Urban Renewal, the power and the authority to acquire real estate by gift and to hold, improve, mortgage or sell the same. Implicit in said Sections is the authority of the City to impose certain conditions upon the buyers of City-owned property to effectuate the purpose of conserving residential property and eradicating slum and blight.

Moreover, since the adoption of the Urban Renewal Consolidation Act of 1961, the municipalities' powers have been extensively widened by the new Illinois Constitution of 1970, which provided in Article 7, Section 6 thereof, for the creation of Home Rule Units of any municipality with a population in excess of 25,000. Section 6(a) of said Article grants Home Rule Units extensive Governmental powers hereinbefore vested in the State. There has been no relevant legislation or judicial determination which has disturbed said grant of powers.

To answer specifically, I am of the opinion that the City of Chicago, through its duly designated Agency, the Department of Urban Renewal, has the power to acquire HUD housing and convey the same, imposing as the consideration thereof, obligations on the Grantee to renovate and occupy said premises as a residence for a specific period of time.

URBAN RENEWAL REHABILITATION LOANS

*(Director of of Rehabilitation, Department of Urban
Renewal—H. A. T.—September 4, 1975)*

You have requested our opinion as to whether the new Real Estate Settlement Procedures Act of 1974 applies to Section 312 Rehabilitation Loans processed by the Department of Urban Renewal.

The Section 312 Federal Loan Program was instituted to encourage rehabilitation of properties in designated areas through Local Public Agencies. The Loan Program is specifically directed to persons who are the owners of residential property in said areas.

The Real Estate Settlement Procedure Act of 1974 concerns the obligation of financing institutions where property is being bought and sold. See Sec. 2(a)(1), headed *Findings and Purpose which refers to Disclosure to Home Buyers and Sellers*. Section 5 refers to a booklet to be issued to advise the *purchasers* of residential real estate as to the nature and cost of the real estate settlement services. Sec. 5-(b)(4) refers to the prospective buyer. Sec. 5(c) refers to an application to borrow money to finance the purchase of residential property. The Disclosure Settlement Statement and Disclosure Form prepared by HUD refer to Borrowers and Sellers. From a reading of the Act, it is clear that Congress intended that it refer to a buying and selling real estate transaction financed through a Lending Institution. We also refer to Vol. 40, No. 100 of the Federal Register dated May 24, 1975, which sets forth in detail implementing rules for the Real Estate Settlement Procedures Act of 1974. Sec. 82.4 of said Rules states specifically "as defined therein, Home Mortgage does not include a home improvement loan or other loan secured by a lien on a one to four family residential property where the proceeds of the loan are not used to finance the purchase or transfer of the property."

It is our opinion that, based upon the foregoing, the Department of Urban Renewal has no obligation to follow the procedures of disclosure required in the Real Estate Settlement Procedure Act of 1974.

PROHIBITION OF CHILDREN AS CONDITION OF LEASE

(Chicago Citizen—M. A.—September 28, 1977)

Your request for information regarding the rights of tenants with children has been referred to this office by the *Chicago Tribune*.

Under applicable Illinois law it is illegal for a landlord to prohibit children under the age of 14 as a condition of a lease (Illinois Revised Statutes, Chapter 80 Sections 37 and 38.) I have enclosed copies of the law for your convenience.

CHAPTER V—REGULATION OF PUBLIC HEALTH, SAFETY AND WELFARE

Section A. FOOD AND DAIRY PRODUCTS

FOOD DISPENSING LICENSE EXEMPTION

*(YWCA of Metropolitan Chicago—
M. L. P.—January 28, 1974)*

Pursuant to your communication of January 8, 1974 addressed to City Collector of the City of Chicago regarding whether or not you should be exempt from paying for a food dispensing license, please be advised:

Chapter 130 Section 18 of the Municipal Code of the City of Chicago provides as follows:

“A charitable, religious or educational institution not carried on for private gain or profit which operated eating facilities in connection with the immediate carrying out of its charitable, religious or educational activities, shall be exempt from the payment of the license fees.”

Your letter states that you are a non-profit organization, but nowhere do you show that the sale of food is in connection with the immediate carrying out of its religious, charitable or educational activities. It is our understanding that your activities at 37 S. Wabash Avenue, Chicago, Illinois, is a hotel facility and that the food dispensing is for the purpose of the hotel residents or transients who pay for the hotel accommodations and the food.

It is therefore our opinion that you are not exempt from paying for a food dispensing license.

REGULATION OF MOBILE FOOD DISPENSER

(Alderman—D. P.—July 16, 1974)

Your letter of June 21, 1974, asks whether the “specific ordinances against peddling in a specified area would prohibit sale from an ice cream truck under the mobile food dispenser ordinance.”

On March 12, 1968, this office issued an opinion, confirmed in an opinion dated September 10, 1969, stating that mobile food dispensers are subject to the limitations of Chapter 160, Section 160-13, with respect to the regulatory provisions thereof even though mobile food dispensers are not required to be licensed under that chapter, but rather under Chapter 130, Sections 130-15.2, 130-15.5.

It is the opinion of this office that the definition of “peddler,” in Chapter 160, Section 160-1, clearly includes the activities of mobile food dispensers. Under these sections licensed mobile food dispensers are exempt from the need to purchase a peddler’s license, but the regulatory provisions of that chapter, including any ordinances excluding peddling from designated areas of the city, remain applicable.

We conclude therefore that the licensed operator of a mobile food dispenser vehicle is subject to the same restrictions as are other peddlers. If this department may be of further assistance, please so advise.

Section B. WEAPONS

DOG REPELLANT SPRAY CANS

*(Acting Commissioner, Department of Water and Sewers—
B. R.—February 5, 1975)*

You request an opinion from this office concerning the lawfulness of your employees possessing dog repellent spray can chemicals. Section 193-1 (h) of the Municipal Code of Chicago reads as follows: "A person commits disorderly conduct when he knowingly: Carries in a threatening or menacing manner, without authority of law, any pistol, revolver, dagger, razor, dangerous knife, stiletto, knuckles, slingshot, an object containing noxious or deleterious liquid, gas or substance or other dangerous weapon, or conceals said weapon on or about the person or vehicle";

Chapter 38, Section 24-1 (3), Ill. Rev. Stat., 1973 provides: "A person commits the offense of unlawful use of weapons when he knowingly: Carries on or about his person or in any vehicle, a tear gas gun projector or bomb or any object containing noxious liquid gas or substance."

Based upon the foregoing, it is our opinion that your employees should not be supplied with the spray can dog repellent chemicals.

REGISTRATION OF CONTRABAND WEAPONS

*(Special Assistant to the Mayor—F. J. D.—
January 8, 1976)*

Your letter dated December 15, 1975, addressed to William R. Quinlan, Corporation Counsel, was assigned to the writer to reply to same. Your letter requested an opinion as to whether a modified version of "The Thompson Model 1927 A1 Semi-automatic Carbine .45 Caliber" could be registered under our Gun Registration Ordinance (Chapter 11.1, Municipal Code of the City of Chicago).

Your letter further stated the following:

"... in the published Ordinances of Firearms of the Bureau of Alcohol, Tobacco and Firearms, 1974 edition, on page 43 there is a question asked, '(99) Is a firearm which was originally designed as a machinegun and which has been modified to fire semi-automatic, still classified as a machinegun?' Answer, 'Yes'".

I call your attention to Chapter 11.1, Section 11.1-8 of the Municipal Code of the City of Chicago which reads in pertinent part as follows:

"... Registration shall not make lawful the carrying or possession of a firearm if prohibited by any other law." Inasmuch as your letter states that "The

local representatives including the Director of the Chicago Office, AT&F, are inclined to agree that this could be a contraband weapon which is not covered under the National Firearm Act of permitted weapons. However, they have asked for additional time in which to conduct additional research . . ." it is the writer's opinion that such weapons should *not* be registered, at least, until the Federal Authorities conclude their research and make a final determination with respect to this particular weapon. If the Federal Authorities conclude that this weapon is without the purview of the National Firearm Act then we would, of course, continue to disallow registration of this weapon. If, however, this weapon is found to be within the bounds of the National Firearms Act, we may consider an Amendment to the existing Registration Ordinance specifically excluding registration to this type of weapon within the City of Chicago.

We trust that the foregoing will lend you some assistance.

DEMONSTRATION OF BULLET RESISTANT PLASTIC

*(Plastic Sales Department, General Electric Company—
R. F. F.—November 8, 1976)*

We have received your letter of November 1, 1976 concerning the plan of General Electric Co. to demonstrate its bullet resistant plastic sheet at the Plastics Show at McCormick Place December 6-10, 1976.

Our office has no objection to the demonstration as described in your letter, provided that those conditions as well as others described in this letter are satisfied.

We note that you have conferred with the management of McCormick Place and have received their permission for the demonstration, which will take place in a room appropriate for such purposes. You also state that you will supply a safety testing tunnel and security people in accordance with the requests of McCormick Place.

In addition, you are no doubt aware that Illinois and Chicago law requires that the persons using firearms have an Illinois State firearms owner's registration card and that the City of Chicago requires the registration of firearms.

In general, the Municipal Code of Chicago does not in most circumstances permit persons to carry firearms or the discharge of weapons in the City of Chicago. Chapter 11.2 and Chapter 193, Section 193-29 of the Municipal Code of Chicago. However, because you will be carrying out a demonstration for test purposes during the course of a trade show, we do not deem these provisions to be applicable for the limited purpose you describe. If we may be of further assistance, please do not hesitate to call on us.

Section C. GAMBLING AND LOTTERIES

GAMING EQUIPMENT EXHIBITION

*(Governmental Affairs Division, Chicago Association of
Commerce and Industry—A. H.—July 24, 1973)*

Your recent letter addressed to Corporation Counsel Richard L. Curry requesting our opinion as to whether there will be any objection to the exhibition of "... gaming equipment, including bingo, pinball machines and coin-operated slot machines . . ." at an "EXPORT TO JAPAN TRADE FAIR," has been referred to the undersigned for consideration and response. You state that the Trade Fair is sponsored by the Chicago Association of Commerce and Industry and will be held at Navy Pier on November 6, 7 and 8, 1973. You observe that the exhibitor, a local company that manufactures said gaming equipment, would exhibit its products in such a way as to permit their operation with the use of tokens instead of coins [United States currency] and that the products would be exhibited in such manner and with the stipulation that they can be sold for use only in Japan.

The applicable statutes and ordinance are to be found in the Illinois Criminal Code of 1961 (Ill. Rev. Stat. 1972 Supp. Ch. 38) and the Municipal Code of Chicago. The Criminal Code provides, in Section 28-1(a), that:

"A person commits gambling when he:

" . . .

" . . .

"(3) Operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gaming device; . . ."

An exception is made in Section 28-1(b), which provides that:

"Participants in any of the following activities shall not be convicted of gambling; . . .

" . . .

" . . .

" . . .

"(4) Manufacture of gambling devices, including the acquisition of essential parts therefor and the assembly thereof, for transportation in interstate or foreign commerce to any place outside this State when such transportation is not prohibited by any applicable Federal law; . . ."

The Criminal Code, Section 28-1.1(e) further provides that:

"Participants in any of the following activities shall not be convicted of syndicated gambling: . . . (4) Manufacture of gambling devices, including the acquisition of essential parts therefor and the assembly thereof, for transportation in interstate or foreign commerce to any place outside this State when such transportation is not prohibited by any applicable Federal law.

The Municipal Code of Chicago, Chapter 191, Section 191-4 contains the following language:

"No person shall *expose any table, wheel, or device of any kind whatsoever, intended, calculated, or designed to be used for gaming or gambling* or for playing any game for chance or hazard, in, upon or along any of the public ways or other public places of the city.

"No person shall bring into the city or have in his possession within the city for the purpose of gaming or gambling for money or other valuable thing, any table, wheel, or other device of any kind or character whatsoever whereon or with which money or any other valuable thing may in any manner be played or gambled." (Emphasis Supplied.)

It is clear from the statutory provisions above cited that the manufacture of gambling devices for transportation in interstate or foreign commerce to any place outside of Illinois, when not prohibited by any applicable Federal law, may be considered neither gambling nor syndicated gambling. The long history of statutory prohibitions and exemptions together with the litigation relating thereto, and the attendant problems of construction, is well documented. See e.g., King, *The Pinball Problem In Illinois—An Overdue Solution*, 57 J. Crim. L., C & P.S. 17 (1966); Bilek and Ganz, *The Pinball Problem—Alternative Solutions*, 56 J. Crim. L., C. & P.S. 432 (1965); King, *The Rise and Decline of Coin-Machine Gambling*, 55 J. Crim. L., C. & P.S. 199 (1964); *Hershey Mfg. Co. v. Adamowski*, 22 Ill.2d 36 (1961); *Shoot v. Illinois Liquor Control Comm'n.*, 30 Ill.2d 570; *White v. Ogilvie*, 51 Ill. App.2d 181; 23 Op. Corp. Counsel 363 (1950).

We find no case or authority, however, which deals with the questions specifically propounded in your letter, namely, the right to sell and to exhibit even such gambling devices, the manufacture of which alone is exempted from criminal prosecution when assembled for transportation in interstate or foreign commerce to any place outside Illinois if not prohibited by applicable Federal law. Assuming, for the sake of argument, however, that "the power to manufacture . . . implies a power to sell the article thus produced. . . ." (*Commonwealth v. Thackra Mfg. Co.*, 156 Pa. 510, 27 Atl. 13, 14), nevertheless there can be no implied right for any ". . . person . . . [to] expose any table, wheel, or device of any kind whatsoever, intended, calculated, or designed to be used for gaming or gambling or for playing any game for chance or hazard, in, upon or along any of the public ways or other public places of the city," as prohibited under Section 191-4 of the Municipal Code of Chicago.

Navy Pier, owned by the City of Chicago, must be considered under Section 191-4 as a "public place of the city." Therefore, the exposition of such "gaming equipment, including bingo, pinball machines and coin-operated slot machines," may not be permitted at the proposed "EXPORT TO JAPAN TRADE FAIR" at Navy Pier.

GAMBLING DEVICE DEFINED

(Pres. I. L.—J. P. F.—May 22, 1979)

Your inquiry of March 6, 1979, has been given to the undersigned for response.

It is my understanding that you will use a "modified slot machine" at the International Word Processing Syntopican VII to be held in Chicago at the Palmer House on June 26, 27, and 28, 1979.

Said "Slot Machine" will operate either on business cards or tokens and no money will be involved. This "Slot Machine" will be used to attract people to your exhibit.

Chapter 28, Section 2 of the Illinois Revised Statutes, 1977, provides the definition of a "gambling device." The definition in relevant part is a machine or "device for the reception of money or other thing of value on chance or skill or upon the action of which money or other thing of value is staked, hazarded, bet, won or lost."

Since nothing of value is used in the operation of your machine, it is the opinion of this Assistant Corporation Counsel that your machine is not a gambling device and does not violate the laws of the State of Illinois or the City of Chicago.

Section D. OTHER HEALTH AND WELFARE REGULATIONS

STORAGE OF GAS

*(City Council Committee on Federal & State Regulation—
F. G. S.—March 19, 1974)*

Your letter of March 12th, 1974, addressed to Richard L. Curry, requesting information as to ordinances that may exist with respect to storage of gasoline in underground tanks at service stations no longer open has been referred to the undersigned for attention and reply.

A review of the matter with the Department of Buildings and the Bureau of Fire Prevention as well as a review of the Municipal Code reveals the following:

Sections of the Municipal Code which have application to the question you raised in your letter, are Sections 43-18, 60-53, 60-82, 606-101, 90-4, 127-12 and 129.1-9.

Pursuant to Chapter 127 of the Municipal Code an application for a license is required for the operation of every filling station. Under Section 127-12 the construction and equipment of filling stations, including tanks shall be made and maintained in accordance with the Municipal Code and subject to inspection by the division marshal in charge of the Bureau of Fire Prevention or his duly authorized representative at least once each year. The construction and use of storage tanks is in connection with the operation of a licensed filling station, there are no provisions that permit the use of storage tanks for storing gasoline on the premises previously licensed for a filling station, where a station is closed down or where no license has been issued for the operation of a filling station.

We are further advised by the Department of Buildings and the Bureau of Fire Prevention that where a filling station is no longer operating and this has been brought to the attention of these agencies the following procedure is followed:

- 1) An inspection is made of the premises.

- 2) It is required that all gasoline be drained from the tanks.
- 3) Where the dispenser (pump) has been removed the suction or discharge pipe must be capped or plugged.
- 4) The fill pipe for gasoline must have a lock.
- 5) All other openings to or from the tank must be secured or plugged.
- 6) The vent to the storage tank must remain open.

We trust this provides you with the information you requested.

LEGALITY OF PROHIBITING PEDDLING

*(Chairman, City Council Committee on Local Industries,
Streets and Alleys—A. A.—D. P.—April 8, 1974)*

Your letter of April 1, 1974, has been referred to me for consideration and reply. You wish to be advised of the legality of three proposed ordinances which would prohibit peddling in designated areas in the 42nd Ward. After a review of the applicable statutory and case authority, particularly *City of Chicago v. Rhine*, 363 Ill. 619 (1936) and *Good Humor Corp. v. Village of Mundelein*, 33 Ill. 2d 252 (1965)), it is the opinion of this office that the three ordinances represent a valid and reasonable exercise of the city's police power.

A few basic principles can be derived from these cases. A municipality has the authority to adopt ordinances tending to promote the general welfare in the use of the streets. This authority carries with it the power to prohibit peddling on the city streets. Should the City Council determine, for example, that only certain areas are sufficiently congested for travel and transportation to warrant a prohibition against peddling, the Council may limit the ban to those congested areas.

REST ROOM FACILITIES— CHICAGO PUBLIC LIBRARY

(Deputy Chief Librarian—F. G. S.—July 23, 1974)

Your letter of July 17, 1974, addressed to Mr. Richard L. Curry, Corporation Counsel, has been referred to the undersigned for attention and reply. In your letter you request an opinion as to whether, under the Municipal Code of Chicago, the Library is required to provide rest room facilities for the public in all its buildings including a sub-branch.

The Municipal Code of Chicago contains no requirements with respect to providing rest room facilities for public use in any library facilities. The requirements for rest room facilities are based on occupancy content.

Notwithstanding the fact that there are no legal requirements for providing rest room facilities for the public in your libraries, in our opinion (as we discussed on the telephone), from a public relations standpoint, arrangements should be made to provide the public with emergency use of the employee rest rooms.

We trust that this answers your inquiry.

JURISDICTION OVER TELEVISION PROGRAMMING

(R. P.—J. A. S.—January 13—1976)

This letter is in response to your letter of December 3, 1975, in which you expressed displeasure at portions of the television presentation of "Steambath" on station WTTW. It is our understanding that prior to the showing of "Steambath" WTTW did announce that the subject matter of the play was unsuitable for children and did advise viewers to use discretion in situations where younger children may be viewing.

The City of Chicago has no authority over the contents of television programming on any station. Authority over programming is under the jurisdiction of the Federal Communication Commission and your letter indicates that you have brought your complaint to their attention.

We recognize your concern in this matter and are confident that your complaints to WTTW and the Federal Communication Commission will result in a satisfactory disposition.

SMOKING ORDINANCE

*(Commissioner, Public Health and Safety—J. P. P.—
June 22, 1976)*

Your letter of May 4, 1976, addressed to the Honorable Richard J. Daley, Mayor of the City of Chicago, has been referred to the undersigned for reply.

Recently the City of Chicago has amended its Smoking Ordinance, and in conjunction with the amending of this ordinance has opened a Branch Court named Public Safety Court. The Public Safety Court prosecutes all smoking violations and all ordinances relating to the control of firearms. As of this date we have experienced a great amount of success in enforcing said smoking ordinance.

Enclosed please find a copy of the City's Smoking Ordinance.

WARNING SIGNS ON AERIAL TOWERS

*(Acting Commissioner, Department of Streets and
Sanitation—R. L. H.—September 9, 1976)*

Your recent letter with attachments requests our opinion regarding certain warning signs suggested to be affixed to Aerial Towers used by the Bureau of Electricity.

We have reviewed the correspondence from Mobile Aerial Towers, Inc. and since it appears therefrom that these warning signs are primarily for the promotion of safety and reduction and prevention of accidents, it would be our opinion that installing such signs on the vehicles would be proper.

POWER TO REGULATE PUBLIC GATHERINGS

(O. O.—M. J. H.—November 19, 1976)

Your letter to the Chicago Police Department has been referred to the Office of the Corporation Counsel for reply.

Enclosed you will find copies of all of the pertinent Illinois Statutes and Chicago Municipal Ordinances concerning the control of demonstration, strikes, parades, etc.

In addition, I have enclosed a copy of our Illinois Constitution, and direct your attention to Article 7, Section 6, which is the "Home Rule" Section. Under "Home Rule" certain municipalities and counties are given wide powers to control matters of local concern.

It is under this Home Rule provision that much of the recent Illinois litigation has pointed to local control of many of the areas in which you express an interest. The case law on Home Rule questions is already impressive, and tend generally to favor the autonomy of home rule units of government in areas of law not expressly reserved to the State government.

Finally, you should be aware that there is substantial impact on all local communities in these areas of public activity through the federal government laws and court cases. The recent trend in the United States has been generally permissive of public activity where it does not endanger the public. Along this line, I would suggest that you contact your Japanese Embassy in Washington, D.C., and request that they inquire at our Library of Congress for any information which might be useful to you under the federal standards, including court decisions in this regard. As you know, under our federal system of government, the federal statutes, regulations, and cases set the standard for local governmental authorities. I would suggest that you also inquire of our National Labor Relations Board in Washington, D.C., for information regarding national standards involving labor disputes and strikes.

REFUSE DISPOSAL

*(Commissioner, Department of Streets and Sanitation—
H. F. W.—April 18, 1977)*

We wish to acknowledge receipt of your letter of February 23, 1977 in which you request an opinion as to whether an exemption may be allowed the Anchor Disposal Service as to the hours to compact, haul and dispose of refuse during hours other than those stated in the ordinance. You attached a copy of Chapter 167, an inspection report dated February 4, 1977 and a copy of a letter from Anchor Disposal Service dated February 2, 1977 to your letter which we herewith return to you.

Chapter 167-8 (1) establishes a "Zone of Non-Operation" within which scavengers are prohibited from grinding or compacting garbage and refuse between the hours of 9:30 P.M. and 7:00 A.M. unless said scavenger obtains a special permit. Under this section of the Municipal Code, you have the authority to issue a special permit to operate within the "Zone of Non-Operation" during the prohibited hours, if you determine that the granting of the special permit is necessary to protect the health, safety and public welfare and that if

you do not issue the special permit, it will create an extreme hardship on the companies involved.

Chicago Food Processors is a meat dressing plant whose facilities are subject to federal controls as to cleanliness and health safety established by the United States Department of Agriculture. Under the Department of Agriculture regulations, meat processing facilities must, before the beginning of the work day, remove all garbage, rubbish and debris and must have all scavenger, other containers and drums washed before reuse of that work day. If the scavenger serving the Chicago Food Processors is not permitted to pick up and remove the garbage and refuse prior to 7:00 A.M. of a given work day, the meat processing company can not start its work day of preparing meats until after the scavenger service has removed the garbage and refuse and all the containers used therein are washed and clean. This could delay the start of the meat processing operations each morning and constitute an extreme hardship on the meat processing company.

Under the provisions of Chapter 167-8 (1) of the Municipal Code of Chicago the Commissioner of Streets and Sanitation has the authority to issue a special permit to a scavenger to perform its functions of compacting, hauling and removing garbage and refuse prior to 7:00 A.M. upon the commissioner determining that the granting of the special permit is necessary to protect the health, safety and welfare of the public and that the failure to issue a special permit will cause an extreme hardship on the meat processor for whose benefit the scavenger is requesting the special permit.

It is our opinion that you may determine that the granting of a special permit is reasonable and necessary. You therefore may process a special permit application on behalf of Anchor Disposal Service.

PRICE MARKING REQUIREMENTS

(Commissioner, Department of Consumer Sales, Weights and Measures—R. R.—August 25, 1977)

This is in response to your request for an opinion concerning an exemption under specified conditions from the requirements of Section 100-29.5 which requires that all pre-packaged consumer items bear the selling price marked directly on the package. Your inquiry indicated that the Aldi-Benner Company is seeking relief from this ordinance for the reason that the individual price marking requirement would conflict with that company's low-overhead marketing methods. Aldi-Benner indicates that its no-frills format includes offering for sale a relatively small selection of items sold from the cartons with item prices being indicated by sign and by printed listings which it supplies to each shopper.

As you know, Section 100.29-15 of the Municipal Code empowers the Commissioner "to adopt and to enforce rules and regulations relating to any matter pertaining to the administration and enforcement" of the consumer commodity sales ordinance. Because Aldi-Benner represents that its marketing techniques will result in consumer savings of approximately 25 percent, its request merits attention and because the price information methods it proposes appear consistent with the purpose of the ordinance it is the conclusion of the law department that a narrowly drawn regulation providing the requested relief is within your authority.

Accordingly, because marketing techniques of the type described were not contemplated prior to the adoption of the ordinance, we conclude that if in your judgment operations of this type will not defeat effective enforcement of the policies of the ordinance, then a general exemption by administrative regulation would be appropriate. We believe that a regulation of general application which would offer opportunities for competition through utilization of such low overhead methods would be proper and in the public interest.

VIOLATION OF EPA REGULATIONS

*(Commissioner, Department of Water and Sewers—
M. J. H.—July 8, 1977)*

We are pleased to advise you that on June 28, 1977, the Pollution Control Board of the State of Illinois entered an order which in effect approves the City's program to convert the three remaining coal-fire boilers to three gas-steam boilers. The parties to the hearing have submitted a stipulation of facts to the Pollution Control Board wherein the City agreed that it would apply for all the necessary construction permits required under the Environmental Protection Agency regulations.

The order of the Pollution Control Board found that the City was in violation of rule 103(b) (2) of Chapter 2 Part 1 of the Air Regulations, that the City should file for all the necessary permits within thirty days of the date of the order, that the City shall comply with the terms of the stipulation of facts which was submitted by agreement of the parties to the board and that the City pay a penalty of \$300.00 for violation of the agency regulations within thirty days of the date of the order. Attached you will find a copy of the opinion and order of the board.

ENFORCEMENT OF REFUSE AND GARBAGE ORDINANCES

*(Deputy Director, Mayor's Office of Inquiry and Information
—R. W. F., August 1, 1979)*

In response to your inquiry regarding the authority of the Department of Streets & Sanitation to enforce the following two ordinances; The Dumping of Refuse (99-36) and Removal of Garbage and Litter from Unimproved Lots (99-36.1), please be informed that the authority is granted in Chapter 99, Section 1 of the Municipal Code.

Specifically, the language of the Code provides: "The Commissioner of Streets & Sanitation shall enforce the provisions of Sections 99-9 and 99-36 to 99-36.10, inclusive, in the manner provided herein for nuisances generally."

If you have any additional questions, please feel free to contact our office.

UNLAWFUL USE—SMOKING PARAPHERNALIA

(Citizen—M. L. P.—September 24, 1979)

Your communication to the Chicago Sun-Times Action Time has been referred to our office for consideration.

Your inquiry regarding "Fun City" on Randolph Street which displays items in its window that you claim can be used for snorting and mixing with cocaine and counterparts are all items that can be used for lawful purposes. There is no way that we can stop a lawful item from being advertised and displayed. It is the unlawful use, if any, that we would have to prove in the event of an unlawful use. Pipes and other smoking equipment are used for smoking of lawful tobacco and we cannot assume that it will be used for an unlawful substance.

The complaint regarding the alley in the rear of the Chicago Federal Savings has been turned over to the Department of Streets and Sanitation for immediate action.

Thanking you very kindly for your interest in these matters, I remain,

CHAPTER VI—LICENSE AND PERMITS

Section A. LIQUOR LICENSES

SCHOOL DEFINED

(Defined Mayor—M. L. R.—Jan. 16, 1974)

Your communication of December 27, 1973 directed to Richard L. Curry, Corporation Counsel of the City of Chicago, wherein you request an opinion as to the legality of issuing a City Retailer's Alcoholic Liquor License to Toppers Liquors, Inc. (7301 S. Exchange Avenue) has been referred to the undersigned for consideration and response. You state that the location in question was issued a license on December 7, 1973. Thereafter, complaints were received from members of the South Shore Chamber of Commerce, indicating this license was issued in error since the premises are within 100 feet of the South Shore Montessori Pre-School at 2352 E. 73rd Street. A reinvestigation of the premises by the Chicago Police Department corroborated this factor.

The question presented for our consideration is whether the South Shore Montessori Pre-School can be considered a "school" within the purview of the Illinois Liquor Control Act, thus prohibiting the issuance of a license to the subject corporation.

The Illinois Liquor Control Act states in part as follows at Section 127:

"No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet of any church, school, hospital, home for aged or indigent persons or for veterans, their wives or children or any military or naval station . . ."

Your communication further indicates that the Pre-School at 2352 E. 73rd Street provides instruction for children three to five years of age. You state that the one story building housing the Pre-School was not designed as a place used for educational purposes. The building has no signs showing it is located therein. Also, there are curtains covering the front windows.

Enclosed please find copies of two previous opinions of the Corporation Counsel discussing the same subject matter as we have here. In an opinion entitled "Day Nursery Next To Tavern" (Opinions of the Corporation Counsel, Volume 22, page 242), it was concluded that a day nursery was not a "school" within the meaning of the word school in the Liquor Control Act. It further states that the legislature in enacting the Act did not intend to include the word "kindergarten" within the meaning of the word "school."

In an opinion entitled "One Hundred Feet From Y.M.C.A." (Opinions of the Corporation Counsel, Volume 24, page 335), the word "school" was discussed in response to whether the Hyde Park Young Men's Christian Association came within the protection of the provisions cited in the Liquor Control Act. The case of *Matter of Townsend*, 195 N.Y. 214, 88 N.E. 41, is cited as a leading authority in this area. In holding that a training school for nurses was not a school within the meaning of a New York statute prohibiting liquor sales within 200 feet of a school, the court reasoned that the term "schoolhouse" did not include all buildings wherein instruction is given of any kind, and without age restrictions.

After careful consideration of the facts presented and the reasoning used in the enclosed previous opinions, we must conclude that the South Shore Montessori Pre-School at 2352 E. 73rd Street cannot be considered a "school" within the meaning of the Illinois Liquor Control Act.

It is therefore our opinion that the liquor license previously issued to Toppers Liquors, Inc. at 7301 S. Exchange Avenue was in conformance with existing law.

"MINOR" DEFINED

(Deputy Mayor—M. L. R.—January 30, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, wherein you request an opinion as to whether the City of Chicago should continue to interpret the word "minor" under the provisions of the Illinois Liquor Control Act and Chapter 147 of the Municipal Code of Chicago, as anyone under 21 years of age, has been referred to the undersigned for consideration and response. You state that on September 10, 1973 the Mayor's Office was informed of the State of Illinois Liquor Control Commission's determination that a minor is any person under 18 years of age; therefore, liquor licensees in the State of Illinois may employ individuals in their businesses if they are at least 18 years old. Prompting a request for an opinion on this subject was an inquiry made by a food store chain, asking if they could employ 19 year olds to dispense beer and wine.

In an opinion dated December 13, 1973, the Attorney General of the State of Illinois concludes as follows:

"... It is my opinion that it is legal in Illinois for persons 18, 19 and 20 years of age to work in and to serve liquor in establishments licensed under the Illinois Liquor Control Act."

Since the word "minor" is not defined in the Liquor Control Act, the Attorney General reasoned that the definition found in the Probate Act, Chapter 3 § 131, Illinois Revised Statutes, 1971 applies. The Act states as follows:

"Persons of the age of 18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained they shall be considered minors."

Article IV § 1 of the Illinois Liquor Control Act, Chapter 43, Illinois Revised Statutes, 1971 reads in part as follows:

"In every city, village or incorporated town, the city council or president and board of trustees, . . . shall have the power by general ordinance or resolution . . . to prohibit any woman or minor, other than a licensee or the wife of a licensee, from drawing, pouring, or mixing any alcoholic liquor as an employee of any retail licensee; and to prohibit any minor from at any time attending any bar and from drawing, pouring or mixing any alcoholic liquor in any licensed retail premises. . . ."

The Attorney General in his opinion interprets this section to mean that until a local municipality prohibits such employment, minors are authorized to act as employees of licensed retail establishments. Such a prohibition appears in Chapter 147, Section 147-14 of the Municipal Code of Chicago:

"It shall be unlawful for any licensee or any officer, associate, member,

representative, agent or employee of such licensee to sell, give or deliver alcoholic liquor to any minor. It shall also be unlawful for any such person to engage or employ or permit any minor to work or to entertain, or to act as host or hostess in or upon the licensed premises where the principal business is the sale of alcoholic liquor, while such premises are open for the sale or retail of alcoholic liquor. Any minor engaged or employed or permitted to work in or upon the licensed premises where the sale of alcoholic liquor is not the main or principal business may not work as entertainer, host or hostess or in connection with the handling, selling, service or delivering of alcoholic liquor."

It is obvious from a reading of the above provision of the Municipal Code that the City Council intended to exclude "minors" from all transactions involving alcoholic liquor in a licensed premise. However, no age is specified in the language of this ordinance.

Section 147-14 of the Municipal Code was discussed in an opinion of the Corporation Counsel dated May 11, 1972, which was written to the then Superintendent of Police, James B. Conlisk, Jr., in response to his request for clarification of "minor":

"Ordinarily, where the term "minor" is used within the language of an ordinance in the Municipal Code of the City of Chicago and no age is specified, section 131 of the Probate Act will control. However, in some cases another provision of the state statutes will act to raise the age of reaching majority for certain purposes. This is particularly true in the case of laws regulating alcoholic beverages. For instance, the Chicago Municipal Code (Sec. 147-14) forbids the sale of liquor to "minor," with no age specified. In this instance, ch. 3 section 131 of the Ill. Rev. Stat.—which would ordinarily control—is superseded by the specific provisions limiting the sale of liquor to minors of Art. VI, Section 12 of the Liquor Control Act, (Ill. Rev. Stat. 1971, Ch. 43, par. 131). . . ."

Utilizing the aforementioned reasoning, it is our opinion that the City of Chicago should not continue to interpret a minor as any person under the age of 21 years, for purposes of employment by liquor licensees. We would, therefore, concur with the Attorney General's opinion that persons 18 years of age or older can work in and serve alcoholic liquor in premises licensed under the Liquor Control Act.

Effective on October 1, 1973 the Illinois General Assembly amended the Liquor Control Act to permit the sale of beer and wine to 19 year olds (Chapter 43 pars. 131, 134a and 183). However, this action by the Legislature does not change the effect of Section 1, Article IV of the Act, giving local municipalities authorization to prohibit minors from serving alcoholic liquor. Unfortunately, the term "minor" has never been defined in the Liquor Control Act. Nor is it defined in Chapter 147 of the Municipal Code of Chicago, wherein minors are prohibited from such transactions. Therefore, it is our opinion that the definition of the term "minor" in Section 131 of the Probate Act controls.

In keeping with the provisions of Section 1, Article IV of the Liquor Control Act, the City of Chicago certainly could amend Chapter 147 § 147-14 of the Municipal Code to specify by local ordinance age requirements for employment by liquor licensees. However, until such time as the City Council takes some affirmative action by way of amendment, a minor is a person under 18 years of age.

In conclusion, it should be noted that the current trend in Illinois and throughout the United States is to lower legal age requirements. Examples

would include the right to vote and the authority to enter into contracts. Just recently, the State of Ohio Racing Commission amended its rules to lower the legal wagering age from 21 to 18 years, effective March 1, 1974. The Commission ruled that 18 year olds will be permitted to wager at all county and independent race meetings at fairs as well as at commercial horse race tracks. This trend, as you know, has reached into the laws regulating the manufacture, sale and distribution of alcoholic liquors. It is our opinion that the City of Chicago should head in the same direction and give liquor licensees within its jurisdiction the right to employ persons reaching the age of 18 years.

LIQUOR LICENSE RESIDENCE REQUIREMENT OF APPLICANT

(Deputy Mayor—M. L. R.—March 20, 1974)

Your recent communication directed to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You state that one Larry Boken's application for a liquor license in the City of Chicago has been disapproved by the Police Department, based upon an investigation revealing that he is not a resident of the City of Chicago. Enclosed was a copy of the police investigative report on this matter dated January 18, 1974, along with an affidavit submitted by the applicant to the Mayor's Office on March 4, 1974, stating that his residence is in the City of Chicago. Said communication seeks an opinion as to whether a liquor license may be granted to Mr. Boken based upon the evidence presented.

Investigator Edward Powell of the 6th Area License Unit reveals the following in his report relative to the application in question:

1. The applicant Larry Boken indicates his residence is at 5054 N. Winthrop Ave. He moved to the location on October 1, 1973 and registered to vote from this address. He has no telephone service at this location.

2. His former residence was in Metamora, Illinois where his wife and two children reside presently. He has a checking account in Metamora (First National Bank of Metamora) his last deposit being \$6,425.33 on December 7, 1973. This deposit money was obtained by a personal loan to him in the amount of \$7,500.00; this loan was made to purchase the premises where a liquor license is being sought at 927 W. Wilson, Chicago, Illinois.

3. The applicant is not legally separated from his wife. He maintains his residence at 5054 N. Winthrop Ave., during the week and travels to Metamora on the weekends from Friday through Sunday.

The applicant's affidavit submitted on March 4, 1974 indicates in substance that he resides at 5054 N. Winthrop Ave., Apt. 102 in the City of Chicago. He states that although his wife is presently in Metamora taking care of her sick mother, she intends to move to Chicago once she can sell their home. He has no telephone in his apartment, since he has one at his place of employment at O'Hare Field (American Airlines), and one in his place of business on Wilson Ave.

Article VI, Section 2 of the Illinois Liquor Control Act (Chapter 43, Illinois Revised Statutes, 1971) reads as follows in part:

"No license of any kind issued by the State Commission or any local commission shall be issued to:

(1) A person who is not a resident of any city, village or county in which the premises covered by the license are located; except in case of railroad or boat licenses. . . ."

In a previously published opinion of this office entitled "Residence Requirement of Applicant" (Volume 25, Opinions of the Corporation Counsel, p. 257) a similar situation was discussed. The applicant in question maintained a home for his family outside the City of Chicago; his automobile registration and driver's license reflected this address. In answering a request for an opinion as to whether the applicant satisfied the necessary residence requirement for a City of Chicago Liquor License under state law by also maintaining an apartment in the City of Chicago, the following was written:

"There are many factors which go into making a determination as to what constitutes a bona fide residence within the meaning of the above quoted section. These factors include voting address, mailing address, driver's license address, registration of children in schools and where, in fact, the home of the family is maintained. The mere renting of a room or giving of a street address within the city limits is not sufficient to establish residence where all other factors tend to indicate that the actual residence is not within the city limits.

"In the case of *Noble v. Illinois Liquor Control Commission*, 24 Ill. App. 2d 444, the village originally issued a retail liquor license to the widow of an operator of a tavern in the village for the year 1957 on her assurance that she would become a resident of the village. She did not move to the village and maintained her residence elsewhere and in 1958 she rented a room in the village a half a block from the tavern. The Court held that she did not establish a bona fide residence in the village and that the Local Liquor Control Commissioner of the village was justified in refusing to renew her license for 1958."

In making a determination as to one's residence within the City of Chicago for purposes of making application for a liquor license, all pertinent facts and circumstances must be taken into consideration in each individual case. From the aforementioned information, taking into consideration the factors stated in the above quoted past opinion of this office, it is our opinion that the applicant, Larry Boken does not meet the residence requirement of the Illinois Liquor Control Act; therefore, his liquor license application should be disapproved by the Local Liquor Control Commissioner. [Assuming that the applicant qualifies to hold a liquor license in all other respects, nothing would prevent him from incorporating his business and applying for this license as a corporation. A corporation does not become ineligible to hold a retail liquor license in the City of Chicago by reason of the fact that any of its officers may reside outside of the corporate limits of the City.]

PROCEDURE FOR LOCAL OPTION REFERENDUM

*(Concerned Citizens North of Howard—M. L. R.—
August 5, 1974)*

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request our opinion as to several questions dealing with a local option referendum for the retail sale of alcoholic liquor in Precinct #3 of the

49th Ward in the City of Chicago. The questions are set out below with our replies as follows:

1. "We have enclosed a copy of our petition form. Is this form correct and legal?"

Article IX of the Illinois Liquor Control Act, Ill. Rev. Stat. 1973, Ch. 43, sets forth at Section 4 the required form that a petition for submission must follow. The sample petition submitted for our review complies with the Act.

2. "Who is eligible to sign petitions? Registered voters? Only those voters on the October, 1972, poll list? What about those who have moved in or out of the precinct since November, 1972? Can voters registered but not on the poll list sign?"

Section 4 of Article IX provides that the petition "shall be signed by the legal voters in their own proper persons only." The term "legal voter" is defined at Section 1 of Article IX as follows:

"'Legal voter,' insofar as the signing of a petition for a local option election is concerned, means a person whose name appears on the poll list of the last general election of county or state officers."

3. "In the petition requirement of '25% of registered voters,' to what does the 25% figure refer? 25% of those eligible to sign? or 25% of those eligible to vote? 25% of the number of residents of the precinct? or 25% of some other figure?"

The Act provides at Section 2 of Article IX that the petition shall contain "the signatures of not less than 25% of the legal voters registered with the board of election commissioners or county clerk, as the case may be, from the municipality." Using the above cited definition of the term "legal voter," the percentage provision is applicable only to those individuals whose names appear on the poll list of the last general election.

4. "What form is required for the signatures on petitions? Must voters sign as their signatures appear on their voter registrations? Are abbreviations for addresses (such as "N." for North or "St." for Street) permissible?"

The form of the petition as provided for at Section 4 must include the name of the signer, the P.O. Address, a description of the precinct as of the last general election, and the date of signing. In order for signatures to be valid, they must be "signed by the legal voters in their own proper persons only, and opposite the signature of each legal voter shall be written his residence address (stating the street and the house number if there be such) and the date of signing the petition." Abbreviations for addresses are permissible. The signer of the petition should sign his name as it appears on the precinct poll list of the last general election.

5. "Who can circulate petitions? Only residents of the precinct? Only registered voters? Only those eligible to sign?"

The petition can be circulated only by a resident of the precinct affected by the petition. Section 4 of Article IX provides as follows:

"... At the bottom of each sheet of the petition there shall be added a statement, signed by a resident of the particular precinct or political subdivision of the State which is affected by the petition with his residence address, stating that the signatures on that sheet of the petition are genuine, and that to the best of his knowledge and belief the persons signing

the petition were at the time of signing, legal voters in the political subdivision or precinct, as the case may be, that their respective residences are correctly stated therein and that each signer signed the petition on the date set opposite his name. . . ."

6. "Who is eligible to vote on the proposition? All registered voters in the precinct? or only those on the November, 1972, poll list?"

All registered voters in the precinct are entitled to vote upon the proposition.

7. "If the precinct boundaries are redrawn before November, who is then eligible to vote? Residents of 'old Precinct 3' or residents of 'new Precinct 3'?"

All registered voters in "new Precinct 3." (Note: the Board of Election Commissioners reports that no precinct boundary changes are scheduled in the 49th Ward prior to November).

8. "If the precinct boundaries are redrawn before November, which area would be affected by the referendum? Again, 'old Precinct 3' or 'new Precinct 3'?"

"New Precinct 3" would be affected by the referendum.

9. "If the precinct boundaries are redrawn, either before or after November, how soon would an attempt to repeal (or retry) the vote be possible? Does the 47-month time limit apply if the precinct boundaries are changed? Would it apply to 'Precinct 3' or to any precinct which includes any part of 'old Precinct 3'?"

The 47-month time provision would apply if the precinct boundaries are changed. Notwithstanding any change in the limits of the precinct in question, the status of all the territory within the precinct remains the same until the voters have changed such status. Section 10 of Article IX provides as follows with respect to resubmission of the proposition:

"A vote under the provisions of this Act in and for any political subdivision or precinct upon the proposition to prohibit the sale at retail of alcoholic liquor . . . shall be a bar to the submission to the voters thereof of any of such propositions as applied to all or any part of that political subdivision or precinct for 47 months thereafter."

PENALTIES FOR VIOLATION— CIVIL RIGHTS ACT

*(Director of Program Services, Chicago Commission on
Human Relations—M. J. P.—October 29, 1974)*

I have reviewed the pamphlet entitled "Your Right to Public Places," which you submitted to me.

After a close reading of the brochure and the applicable statutes, it is my opinion that the summary of laws regarding the rights of persons to public places and facilities which is contained in the brochure is accurate, except for a minor detail having to do with the criminal penalty for violating the "Illinois Civil Rights Act."

For the most part, the provisions of the "Illinois Civil Rights Law" are outlined with considerable precision. See, in general, Chapter 38, *Illinois Revised Statutes*, Sections 13-1 to 13-4. The list of public accommodations which is contained in the second paragraph of the brochure, while not, in terms of language, identical to the long list contained in Section 13-1, nonetheless clearly expresses the broad definition of a "Public Place of Accommodation or Amusement" specified in that section. The enforcement duty of the State's Attorney and Attorney General is correctly stated in the fourth paragraph, Chapter 38, *Illinois Revised Statutes*, Section 13-4, although the brochure makes no mention of the discretionary power of these officials to seek to enjoin the activities made unlawful by the act. See Chapter 38, Section 13-3 (c). The civil remedy provided for in Section 13-3 (b) is also correctly stated in the fifth paragraph of the brochure.

The sixth paragraph, while correct on its face, does not appear to clearly express the point which its author unquestionably intended it to express. As now written, the paragraph merely states that violations of the Liquor Control Act may be punished by revocation of the violator's liquor license. The fact that one of the provisions of the Liquor Control Act prohibits any denial of the "full and equal enjoyment of the accommodations, advantages, facilities and privileges of any premises" in which alcoholic beverages are sold, is not mentioned in the brochure. Chapter 43, *Illinois Revised Statutes*, Section 133. It is submitted that the paragraph would better serve the author's obvious intent to outline the laws relating to the right to the equal use and enjoyment of public facilities and accommodations, if it read as follows:

"Licenses to sell alcoholic beverages may be revoked if a tavern keeper or other license holder violates the provisions of the Illinois Liquor Control Act, which prohibit discrimination by such license holders.

As noted by the brochure, Title II of the Civil Rights Act of 1964 prohibits discrimination in places of public accommodation, as does a Chicago City Ordinance (Chapter 199A, *Municipal Code of Chicago*). The brochure's mention of the fact that parks and other public places are open to full and equal use by all persons, expresses the legislative mandate implied by the acts noted above, and made explicit in Chapter 38, *Illinois Revised Statutes*, Section 13-2 (d), as well as the constitutional mandate of the 14th Amendment. See, e.g., *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). This same body of law, which mandates the "full and equal" enjoyment of recreational facilities by all persons, regardless of race or religion, prohibits the confinement of a particular ethnic, racial or religious group to a specific park, or a specific portion of a park. See, e.g., Chapter 38, Section 13-2 (d). Thus the statement contained in the ninth paragraph is an accurate expression of the law on this point.

Finally, the last paragraph in the brochure correctly notes the penalty provided for violations of the Illinois Civil Rights Act by state, county, or city employees. Chapter 38, *Illinois Revised Statutes*, 13-3 (d).

In conclusion, the only inaccuracy in the brochure is the statement of criminal penalties for violation of the Illinois Civil Rights Act, which is noted in the brochure's third paragraph. The only other defect in the brochure is the statement contained in the sixth paragraph, which does not clearly state the legal sanction which the author evidently intended to mention.

LOCAL OPTION REFERENDUM ON THE RETAIL SALE OF LIQUOR

*(Vice President, South Shore Commission—
M. L. R.—November 20, 1974)*

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request our opinion as to several questions dealing with a local option referendum for the retail sale of alcoholic liquor in your area. The questions are set out below with our replies as follows:

1. "Can a precinct place the proposition on the ballot this spring, at the general election on April 1, 1974?"

Article IX of the Illinois Liquor Control Act, Ill. Rev. Stat. 1973, Ch. 43, sets forth at Section 2 the following:

"When any legal voters of a precinct in any city, village or incorporated town of more than 200,000 inhabitants, as determined by the last preceding Federal census, desire to pass upon the question of whether the sale at retail of alcoholic liquor shall be prohibited in the precinct, they shall, at least 60 days before an election, file in the office of the clerk of such city, village or incorporated town, a petition directed to the clerk, containing the signatures of not less than 25% of the legal voters registered with the board of election commissioners or county clerk, as the case may be, from the precinct. The petition shall request that the proposition 'Shall the sale at retail of alcoholic liquor be prohibited in _____?' be submitted to the voters of the precinct at the next ensuing election at which such proposition may be voted upon. . . ."

The word "election" is defined at Section 1 of Article IX:

"'Election' as used in reference to cities, villages and incorporated towns, means an election at a time fixed by law for choosing city, village or incorporated town officers. . . ."

Section 1 further provides a definition of the phrase "next ensuing election":

". . . the words 'next ensuing election' as used herein shall mean the next ensuing election for officers of such city, . . . regardless of any intervening elections at which residents of such city . . . may vote."

From the above definitions it is clear that such proposition may be voted upon at the next general election in the City of Chicago on April 1, 1975.

2. "We also want to know the *date* for filing."

Using the above cited provisions from Article IX, the date for filing the requisite petitions would be at least 60 days before the general election of April 1, 1975.

3. "We also want to know if the proper list of voters we should get our petitions signed from is the 1974 precinct polling list (November, 1974)."

Section 1 of Article IX defines "legal voter" as follows:

"'Legal voter,' insofar as the signing of a petition for a local option elec-

tion is concerned, means a person whose name appears on the poll list of the last general election of county or state officers."

Therefore, you would be correct in using the applicable precinct poll list from the November election of this year.

PETITION FOR LIQUOR LICENSE

(City Clerk—M. J. H.—June 3, 1976)

Your letter, with an attached petition, addressed to Mr. William R. Quinlan, Corporation Counsel, has been referred to the undersigned for consideration and response. In your letter, you request an opinion as to the legality of the attached petition.

Your office certified that the attached petition was filed with it on April 20, 1976, as Document No. 547967 pursuant to Chapter 43, Illinois Revised Statutes (1975) Section 173.1(b). The said statute in pertinent part provides:

"... Thirty days following the filing of such petition, the requested status, as specified in such petition, shall become effective in the annexed and disconnected area, unless within the 30 day period, written verified objections by a voter residing in the annexed or disconnected area are filed with the clerk..."

Applying the above stated statute to the instant case, the petition is valid and legal since it has not been attacked by a voter in the area by May 30, 1976. Therefore, liquor licenses, for package goods only, may be issued in the annexed area of the 53rd precinct as referred to in the petition.

VALIDITY OF PETITION FOR LIQUOR LICENSE

(City Clerk—M. J. P.—October 20, 1976)

Your letter, with an attached petition, addressed to Mr. William R. Quinlan, Corporation Counsel, has been referred to the undersigned for consideration and response. In your letter, you request an opinion as to the legality of the attached petition.

Your office certified that the attached petition was filed with it on September 13, 1976, pursuant to Chapter 43, Illinois Revised Statutes (1975) Section 173.1 (b). The said statute in pertinent part provides:

"... Thirty days following the filing of such petition, the requested status, as specified in such petition, shall become effective in the annexed and disconnected area, unless within the 30 day period, written verified objections by a voter residing in the annexed or disconnected area are filed with the clerk..."

Applying the above stated statute to the instant case, the petition is valid and legal since it has not been attacked by a voter in the area by October 12, 1976. Therefore, liquor licenses may be issued in the area disconnected from the 48th Precinct of the 16th Ward of the City of Chicago and annexed to the 39th Precinct of the 16th Ward.

ISSUANCE OF LIQUOR LICENSE IN RECENTLY ANNEXED AREA

(City Clerk—M. J. H.—December 2, 1977)

Your letter, with an attached petition, addressed to Mr. William Quinlan, Corporation Counsel, has been referred to the undersigned for consideration and response. In your letter, you request an opinion as to the legality of the attached petition.

Your office certified that the attached petition was filed with it on October 3rd, 1977, pursuant to Chapter 43, Illinois Revised Statutes (1975) Section 173.1 (b). The said Statute in pertinent part, provides:

" . . . Thirty days following the filing of such petition, the requested status, as specified in such petition, shall become effective in the annexed and disconnected area, unless within the 30 day period, written verified objections by a voter residing in the annexed or disconnected area are filed with the Clerk. . . ." (Emphasis Ours)

Applying the above stated Statute to the instant case, the petition is valid and legal since it has not been attacked by a voter in the area by November 3, 1977. Therefore, liquor licenses may be issued in the annexed area of the 32nd Precinct of the 29th Ward, of the City of Chicago as described in the Petition.

AGE REQUIREMENT FOR WORK IN LIQUOR LICENSED PREMISES

(W. M. R.—M. J. H.—May 31, 1979)

Your inquiry of February 23, 1979 has been given to the undersigned for response.

Your question is whether the City of Chicago has any ordinance differing from Rule 2 of The Illinois Liquor Control Commission.

Enclosed is a copy of Chapter 147, Section 14 of the Municipal Code of The City of Chicago. It provides that no person under the age of 21 can work in a liquor licensed premises.

Section B. STATE, PUBLIC VEHICLE AND DRIVER'S LICENSES

ENFORCEMENT POWERS OVER NEW LIMOUSINE SERVICE

*(Commissioner, Public Vehicle License Commission—
B. R.—October 30, 1974)*

After review of the existing operation of Continental's new limousine service within the City of Chicago, it is our legal opinion that the said service

would not be subject to your jurisdiction *as long as* the same is limited to the routes and stops, in Chicago, as certified by the Illinois Commerce Commission. Should Continental deviate from the said routes and stops, then the Company would be in violation of Section 28-2 of the Municipal Code of Chicago and your enforcement powers would apply.

This opinion has been transmitted to Continental so that the Company may structure its new limousine service accordingly.

ARRESTS WITHOUT CONVICTION— EFFECT ON LICENSE ISSUANCE

(Commissioner, Public Vehicle License Commission—
M. J. P.—January 31, 1974)

Your letter addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, concerning the issuance of a license to Mr. Gozan Deloney, based upon the information contained in the file attached to your letter, has been referred to the undersigned for reply.

The Police Report attached to your letter shows numerous arrests. However, there are no convictions listed.

In your letter, you refer specifically to a 1971 arrest for possession of Heroin, in violation of Chapter 38, Section 22-3 of the Illinois Revised Statutes. Mr. Deloney was subsequently indicted by the Grand Jury. Because he submitted to the Drug Abuse Program, the indictment was dismissed.

The law covering this fact situation can be found in Chapter 28.1, Section 3, paragraph 3 of the Municipal Code of Chicago, which states in part as follows:

"No such license shall be issued to any person at any time after the *conviction of a crime involving* the use of a deadly weapon, *traffic in narcotic drugs*, the infamous crimes against nature, incest or rape." (Emphasis supplied)

Since Mr. Deloney has never been convicted of a crime involving traffic in narcotics, he cannot be denied a license on this basis.

However, Chapter 28.1, Section 4 of the Municipal Code of Chicago, provides for a character investigation as follows:

"The character and reputation of each applicant shall be investigated under the supervision of the captain of the police district in which the applicant resides, and a report of such investigation containing any facts relevant to the character and reputation of the applicant shall be forwarded by the captain to the commissioner of police, who shall forward the same to the commissioner together with his recommendation. If the commissioner shall be satisfied that the applicant is of good character and reputation and is a suitable person to be entrusted with driving a public passenger vehicle he shall issue the license. Pending such investigation the commissioner may issue a temporary permit authorizing the applicant to drive a public passenger vehicle until the time designated in such permit. If the investigation is not completed by that time the commissioner may, in his discretion, extend the time of such permit until such further time as in the opinion of the commissioner the investigation can be completed."

Therefore, it is the opinion of the undersigned that Gozan Deloney cannot be denied a Public Chauffeur's License because of his arrest record. However, it is suggested that a detailed and exhaustive character investigation be conducted by the Police Department, to determine whether or not Mr. Gozan Deloney is a fit and proper person to have a Public Chauffeur's License.

QUALIFICATION FOR HANDICAPPED APPLICANTS

*(Commissioner, Public Vehicle License Commissioner
—M. J. P.—February 5, 1974)*

Your letter addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, requesting an opinion as to guide lines on the eligibility of applicants, who are handicapped, has been referred to the undersigned for reply.

In your letter, you refer to an applicant for a Public Chauffeur's License, who had incurred an injury in 1973, that has left him so handicapped that he is not able to be fitted with an artificial limb. However, the injury does not hamper him in operating a vehicle.

Chapter 28.1, Section 3, Paragraph 2, of the Municipal Code of Chicago, provides in part as follows:

"Every applicant shall be at least eighteen years old, a citizen or declarant of citizenship of the United States of America and shall hold the *license of an Illinois State Chauffeur's License* (Emphasis supplied).

Applying the law to this fact situation, it is the opinion of the undersigned that the proper guide line to be used in determining the eligibility of handicapped applicants is whether or not they are able to pass the necessary tests of physical performance to procure an Illinois State Chauffeur's License. If they qualify for the State's Chauffeur's License, then they will also qualify for the City's Public Chauffeur's License.

MINIMUM AGE FOR CORPORATION OFFICERS

*(Public Vehicle License Commissioner—
M. J. P.—March 22, 1974)*

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, wherein you request an opinion as to whether it is legal for a twenty (20) year old female to be Secretary-Treasurer of a corporation in the State of Illinois, has been referred to the undersigned for consideration and response. In your letter you state that the papers and minutes of an ambulance company show that their Secretary-Treasurer is a female age twenty (20) years, and that this person will sign all papers and pick up the current licenses.

Chapter 32, Section 157.43 of Illinois Revised Statutes (1972) provides as follows:

"The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the by-laws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time

and in such manner as may be prescribed by the by-laws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the by-laws. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

"All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the by-laws. As amended by act approved June 30, 1945. L.1945, p. 544."

Since there is no age requirement listed in the above section, then any person not a "minor" can be an officer in an Illinois Corporation.

Section 147-14 of the Municipal Code was discussed in an opinion of the Corporation Counsel dated May 11, 1972, which was written to the then Superintendent of Police, James B. Conlisk, Jr., in response to his request for clarification of "minor":

"Ordinarily, where the term 'minor' is used within the language of an ordinance in the Municipal Code of the City of Chicago and no age is specified, section 131 of the Probate Act will control."

In an opinion dated December 13, 1973, the Attorney General of the State of Illinois reasoned that,

"Since the word 'minor' is not defined in the Liquor Control Act, the Attorney General reasoned that the definition found in the Probate Act, Chapter 3, Section 131, Illinois Revised Statutes, 1971 applies."

The Act states as follows:

"Persons of the age of 18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained they shall be considered minors."

Utilizing the aforementioned reasoning, it is our opinion that any person over the age of eighteen (18) years can be the Secretary-Treasurer of a corporation in the State of Illinois.

STATION WAGONS AS TAXICABS

*(Public Vehicle License Commission—M. J. P.—
March 22, 1974)*

Your recent letter addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, requesting an opinion as to whether a station wagon meets the requirements of the Chicago Municipal Code to be licensed as a taxicab, has been referred to the undersigned for reply.

In the letter attached to your request, the applicant states that the body style which he proposes has a seating capacity for four passengers plus the driver. The vehicle is full-sized. The amount of space provided for passenger comfort exceeds that of the Torino type taxicab that has been licensed by your Bureau during the year 1973 and 1974.

Chapter 28-4.1 of the Municipal Code of Chicago provides as follows:

"No vehicle shall be licensed as a public passenger vehicle unless it has two doors on each side, and no vehicle having seating capacity for more than eight adults shall be so licensed unless it has at least two doors with fixed aisle space for access to said doors."

Applying the law to this fact situation it is the opinion of the undersigned that these station wagons conform to the Municipal Code of Chicago and therefore they would be permissible to use as taxicab vehicles.

RIGHT TO REQUEST URINE DRUG TEST

*(Commissioner, Public Vehicle License Commission—
M. J. P.—March 26, 1974)*

Your recent letter addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, requesting an opinion as to whether the Public Vehicle License Commission may request an applicant, who is participating in the Drug Abuse Program, to submit to a urine test, has been referred to the undersigned for consideration and reply.

In your letter, you state that the Drug Abuse Program would cooperate with the Public Vehicle License Commission by giving the individual a urine test. The results of the urine test would show whether the individual is presently a user of drugs.

Since whether or not an applicant is presently using drugs is very important in the issuance of a vehicle license, it is the opinion of the undersigned that the Public Vehicle License Commission has the right to request the applicant to submit to a urine test and to forward the results of said tests to the Public Vehicle License Commission.

The specific applicant, mentioned in your letter, Mr. Gozan Deloney, 6700 South Crandon Avenue, Chicago, Illinois, has contacted the undersigned regarding this matter. He stated that he regularly took urine tests as part of his participation in the Drug Abuse Program. He stated that he would request that the Drug Abuse Program send the results of his urine test to the Public Vehicle License Commission.

CODE REQUIREMENTS FOR TAXIMETERS

*(Commissioner, Public Vehicle License Commission—
M. J. P.—March 27, 1974)*

Your letter of March 13, 1974, addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago requesting an opinion as to whether a new type of taximeter, described in the letter attached to your request, would meet the requirements of the Municipal Code of Chicago, has been referred to the undersigned for reply.

In the letter attached to your request, the applicant states that the new taximeter is not equipped with a flag.

Chapter 28-24 of the Municipal Code of Chicago provides, in part, as follows:

"Every taxicab shall be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached. The taximeter *shall be equipped with a flag* at least three inches by two inches in size. The flag shall be plainly visible from the street and shall be kept up when the taxicab is for hire and shall be kept down when it is engaged. (emphasis supplied)

"Taximeters shall have a dial or dials to register the tariff in accordance with the lawful rates and charges. The dials shall be in plain view of the passenger while riding and between sunset and sunrise the dial shall be lighted to enable the passenger to read it. . . ."

Applying the law to this fact situation, it is the opinion of the undersigned that the new taximeters do not comply with the requirements of the Municipal Code of Chicago. Therefore, the new taximeters cannot be approved for use.

FEE EXEMPTION FOR NOT-FOR-HIRE VEHICLE

*(Commissioner, Public Vehicle License Commission—
M. J. P.—April 9, 1974)*

Your recent letter addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, requesting an opinion as to whether the Chicago Association for Retarded Children qualifies as a tax-exempt operation under the Municipal Code of the City of Chicago, has been referred to the undersigned for reply.

In the letter attached to your request the applicant states that:

"The Chicago Association for Retarded Children (CARC) is a not-for-profit organization dedicated to planning and providing services to mentally handicapped children and adults in the City of Chicago, regardless of income, race, religion, or national origin.

"The vehicles in question are used by the Division of Vocational Services of CARC to transport mentally handicapped adults (ages 16 and up) to and from their residences to our three vocational rehabilitation workshop facilities where they are gainfully employed. They would not be charged for this transportation.

"Our workshop facilities offer long term sheltered employment, transitional work adjustment training, a behavioral development program, and a work activities program. It is the goal of the CARC Adult Vocational Programs that all development be geared as realistically as possible toward the competitive work situation, and, as a client's development increases, he is transferred to our job placement program."

Chapter 23-2 of the Municipal Code of Chicago provides:

"It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers *for hire* within the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle." (Emphasis supplied)

Applying the law to this fact situation, it is the opinion of the undersigned that the vehicles to be used by the Chicago Association for Retarded Children would qualify as not-for-hire vehicles. Therefore, the Chicago Association for Retarded Children would qualify without paying a fee.

AMBULANCE SERVICE WITH SIMILAR NAMES

*(Public Vehicle License Commission—M. J. P.—
April 17, 1974)*

Your letter dated April 5, 1974 addressed to the Honorable Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. In your letter, you request an opinion as to whether a license should be issued to the Chicago Ambulance Corporation.

In your letter you state that Capitol Ambulance Company d/b/a Capitol Ambulance Service was an ambulance company licensed by your office. Subsequently your office received an application for a license from Chicago Ambulance Corporation, a new corporation which meets all requirements of the Ordinance to be licensed.

Chapter 103 of the Municipal Code of Chicago deals with the licensing of ambulances. There is nothing in the Chapter which prohibits two similarly named corporations from being licensed by your office.

Applying the law to this fact situation, it is the opinion of the undersigned that there is no sufficient basis to deny the application for a license of Capitol Ambulance Corporation.

OPERATIVE DATE OF ORDINANCE

*(Public Vehicle License Commissioner—
M. J. P.—April 17, 1974)*

Your letter, dated April 4, 1974, addressed to the Honorable Richard L. Curry, Corporation Counsel, has been referred to the undersigned for consideration and reply. In your letter you request an opinion as to the effective date of Section 28-12 of the Municipal Code of the City of Chicago.

In your letter you refer to Section 2 of said Ordinance which provides as follows:

“This ordinance shall be in full force and effect on January 1, 1974.”

This ordinance was not passed by the City Council until March, 1974. Since an ordinance cannot be retroactive, Section 2 cannot be operative and, therefore, must be deleted.

Section 28-35 of the Municipal Code of Chicago provides as follows:

“The invalidity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.”

Therefore, the rest of the ordinance is valid.

When, as in this case, there is no effective date stated within an ordinance, the effective date is ten days after due passage and publication. Section 28-12 of the Municipal Code of Chicago was published, after due passage, in the Journal of Council proceedings on April 11, 1974. Therefore said ordinance will be effective on April 21, 1974.

VEHICLES IN STORAGE

(Budget Director—J. J. W.—July 15, 1974)

In response to your request for information dated June 27, 1974 on the legality of issuing citations for failure to display City Vehicle Licenses on commercial trucks garaged within the City; and whether such may be issued whether or not the vehicles are in operation at the time, such questions come under the general provisions of Chapter 29 of the Municipal Code.

The requirement of a license as stated and defined in Section 2 of that Chapter reads as follows:

It shall be unlawful for any motor vehicle owner residing within the city to use, or to cause or permit any of his agents, employees, lessees, licensees, or bailees to use, any motor vehicle upon the public ways of the city, unless such vehicle be licensed as hereinafter provided.

It shall be unlawful for any person not residing within the city to use, or cause or permit any of his agents or employees to use any motor truck, motor driven commercial vehicle or motor vehicle which is used for public hire, upon the public ways of the city, unless said vehicle is licensed as hereinafter provided, or unless such owner shall have obtained a certificate of registration from the Secretary of State of Illinois as by law provided.

That section further provides that:

No person residing within the city shall be exempt from the operation of this chapter, or released from the payment of the license fee required, by reason of the registering of an automobile or other vehicle in a municipality other than the City of Chicago or in another state or sovereignty beyond the jurisdiction of the State of Illinois, but if such automobile or other vehicle is used or operated to the provisions of this chapter, even though it has been registered in some other jurisdiction outside of the city or state.

The key word in both these paragraphs which contains the grant of jurisdiction over the owner of said vehicles is "residing." Chapter 29 Section 1 states that:

"Residing within the city includes the owning, leasing, or otherwise controlling of property or a place of business wherein motor vehicles, trailers, or semi-trailers are stored, repaired, serviced, loaded or unloaded within the city in connection with such business."

However, the language of Section 2 also limits the scope of authority to instances in which the vehicles are "in use or operation" upon the public ways.

It would clearly appear that the trucks in question, as they are garaged at the Chicago address "in connection with" the business conducted therein, fulfill the necessary requirements for giving Meldon Products residency within the city. At the very least, they fulfill the requirement of being "stored" at the premises.

Therefore, although such citations may be issued to this owner, such can only be issued when his vehicles are actually in transit upon the public ways.

SIGHTSEEING VEHICLES AND AIRPORT LIMOUSINES

(*Supervisor, City of New Orleans Taxicab Bureau—
B. R.—July 29, 1974*)

Your recent letter addressed to the Mayor of the City of Chicago, Honorable Richard J. Daley, has been referred to the writer for reply. Attached to your letter is a questionnaire listing nine (9) separate inquiries. I shall refer to the inquiries in chronological order.

In response to inquiries one (1) and two (2), Chicago's Municipal Code refers to both Sightseeing Limousines and Sightseeing busses as "Sightseeing Vehicles." There is no limitation on the number of Sightseeing Vehicles which may be licensed within the City of Chicago.

In response to inquiries three (3) and four (4), Airport Limousines and Airport Busses are regulated by the Illinois Commerce Commission. The Commission will not allow one transportation company to invade the territory of another transportation company by issuing a similar Certificate of Public Convenience and Necessity unless the first transportation company is not, and refuses, rendering adequate service. As stated by our Illinois Supreme Court, where there is an existing carrier in the field, before the Commission can grant a certificate to another carrier, it must first appear that the existing carrier is not rendering adequate service. *Illinois Highway Transportation Company v. Commerce Commission*, 404 Ill. 610, 90 N.E. 2d 86 (1950)

Responding to inquiry five (5), licenses issued by the City of Chicago for public passenger vehicles are not interchangeable and also certificates of public convenience and necessity granted by the Illinois Commerce Commission for airport ground transportation service are not interchangeable.

We have already answered inquiry six (6) in response to inquiries three (3) and four (4). It should be pointed out that the failure of a ground transportation company to provide service within a period of two years from the date when it had received Illinois Commerce Commission Certificates of Public Convenience and Necessity makes said Certificates null and void.

In answer to inquiry seven (7), the City does not charge a fee for the inspection of each public passenger vehicle. However, Chicago does charge an annual license fee for each public passenger vehicle as follows:

Livery Vehicle	\$40.00
(for each vehicle designed or used for carrying not more than seven persons, and \$5.00 more for each additional person.)	
Sightseeing Vehicle	\$150.00
Taxicab	\$60.00

The said license fees are designed to cover our administrative cost for inspections of the vehicles and for investigations leading to the issuance of licenses. Since Chicago owns and operates O'Hare and Midway Airports, airport busses and limousines are subject to a single trip permit fee for operating therein at an amount of \$3.00 for vehicles of less than ten passenger capacity and \$5.00 for vehicles of more than ten passenger capacity. Also, ground transportation companies which have a contract with the City of Chicago for surface transportation within our Airports compensate the City by payment of not less than 10% of their gross receipts realized from said surface transportation.

We have answered inquiry eight (8) in response to inquiry five (5) in which we state that the licenses are not interchangeable and, therefore, they may not be used for any other purposes.

Finally, responding to inquiry nine (9), City licenses might be interpreted as a salable item since they could be assigned during the remainder of their one year life. However, the assignment is subject to the approval of our Public Vehicle License Commissioner and there is a license transfer fee of \$50.00 required.

In your questions to us, you refer to "Medallions." Kindly be advised that medallions only apply within Chicago to taxicabs. As for livery and sightseeing vehicles, a sticker license emblem is affixed on the inside of the glass part of the windshield of said vehicles.

For your understanding and convenience, we are attaching hereto a copy of Chapter 28 of the Municipal Code of the City of Chicago which pertains to Public Passenger Vehicles. Should you have any further questions, feel free to contact the writer.

PUBLIC CONVEYANCE VEHICLE DEFINED

*(Commissioner, Public Vehicle License Commission—
B. R.—August 20, 1974)*

We are in receipt of your letter of August 14, 1974 in which you request an opinion from this office as to whether the proposed vehicular activity of Montgomery Ward & Company, Inc. falls within the definition of "public passenger vehicle" as set forth in Section 28-1(c) of the Municipal Code of Chicago. As the writer understands the said proposal, the transportation of passengers by motor vehicle will be limited exclusively to Montgomery Ward employees in carriage between their residences and the Montgomery Ward facility at Chicago Avenue. Even the permanent and back-up drivers are Montgomery Ward employees using the said vehicle for transportation to and from the Chicago Avenue facility.

In *McDaniel v. Glens Falls Indemnity Company* 333 Ill. App. 596, 600 (1948) the question arose whether a person who utilizes a motor vehicle to transport herself and other persons of her own choice to a particular destination for compensation was engaged in activities falling within the definition of "public or livery conveyance." Our Appellate Court ruled that the said activities were not those of a public or livery conveyance:

"It will be observed that the policy in question limits the coverage only while the automobile is used as public or livery conveyance. In the case of *Pimper v. National American Fire Insurance Company*, 139 Neb. 109, 296 N.W. 465, the Supreme Court of Nebraska wrote the syllabus to this case, and there we find the following: 1. 'The term public conveyance means a vehicle used indiscriminately in conveying the public, and not limited to certain persons and particular occasions or governed by special terms. The words public conveyance imply the holding out of the vehicle to the general public for carrying passengers for hire. The words livery conveyance have about the same meaning.'" *Elliott v. Behner*, 150 Kan. 876, 96 P. (2d) 852.

Since the motor vehicular proposal of Montgomery Ward is limited exclusively to its employees, and not offered to the general public, in carriage be-

tween their residences and the Company's Chicago Avenue facility, it is the writer's opinion that the said proposal is not governed by Chapter 28 regulations as set forth in the Municipal Code of Chicago and is not a "public passenger vehicle" operation as defined in Section 28-1(c).

NUMERICAL LIMITATION OF LIQUOR LICENSES

*(District Attorney, Madison County, Alabama—
F. P. C.—August 23, 1974)*

On August 19, 1974 I received a long distance telephone call from you, in which you inquired whether the City of Chicago has an ordinance limiting the number of liquor licenses that may be issued.

Despite the fact that under the Illinois Liquor Control Act, Chap. 43, section 110, of the Illinois Revised Statutes, municipalities in our State are authorized to limit the number of liquor licenses issued, the City of Chicago has no such numerical limitation. Whether or not a liquor license will be issued in the City of Chicago depends on whether the applicant and the premises on which the business is to be operated meets the qualifications set forth in the statutes of the State of Illinois, ordinances of the City of Chicago, and Rules and Regulations of the Illinois Liquor Control Commission.

EFFECT OF CONVICTION— CHAUFFEUR'S LICENSE APPLICATION

*(Commissioner, Public Vehicle License Commission—
B. R.—September 5, 1974)*

You request an opinion from this office whether a public chauffeur's license may be issued to Mr. James T. Covington. It is our understanding that Mr. Covington has been convicted of armed robbery and is presently assigned to the Metro-Chicago Work Release Center of the Department of Corrections as a emergency medical technician.

Section 28.1-3 of the Municipal Code of Chicago states, in part, as follows:

"No such license [public chauffeur's license] shall be issued to any person at any time after conviction of a crime involving the use of a deadly weapon. . . ."

In order to be licensed as an ambulance attendant or attendant driver, a person must secure a public chauffeur's license (Section 103-13, Chicago Municipal Code).

It is therefore our legal opinion that Mr. Covington does not qualify for the issuance of a public chauffeur's license and for employment as an ambulance attendant or attendant driver within the City of Chicago.

We note your concern for the rehabilitation of persons convicted of crime. It is our suggestion that you attempt to persuade the City Council to amend Section 28.1-3 so that you would have the discretion to waive the limitations therein. As you are aware, such discretionary powers would have to include guidelines and standards which could withstand a constitutional challenge in the courts.

ASSIGNMENT OF LIVERY LICENSES

*(Commissioner, Public Vehicle License Commission—
B. R.—November 12, 1974)*

You request an opinion from this office as to the lawfulness of assignments of Chicago livery licenses. Kindly be advised that the Corporation Counsel's Office, on two previous occasions, has rendered opinions in which it was determined that Chicago livery licenses are assignable (See Opinion of April 22, 1958 by Assistant Corporation Counsel Edward V. Hanrahan and Opinion of November 22, 1961 by Assistant Corporation Counsel Ronald A. Parizek).

We have reviewed Chapter 28 of the Municipal Code of Chicago and concur in the said Opinions that Chicago livery licenses are assignable. It should be noted that Section 28-9.1 requires the following: "If the assignee is found to be qualified the license shall be transferred to him by the Commissioner, subject to payment of a transfer fee of \$50.00. . . ."

LICENSE REQUIREMENT—
PRIVATELY OPERATED AMBULANCE

*(Commissioner, Public Vehicle License Commission—
B. R.—January 24, 1975)*

You requested a legal opinion from this office whether the captioned service requires a Chicago ambulance license and a license fee.

It is our understanding from reading Mr. Frederic J. Fleming's letter to you, that the said service is for the purpose of transporting critically ill children from other hospitals to Children's Memorial Hospital. We conclude that the proposed service falls within the definition of an "ambulance" as set forth in Section 103-1 (a) of Chicago's Municipal Code.

Although the proposed service is sponsored by the State of Illinois Department of Public Health, Division of Emergency Medical Services and the vehicles, "Overland Critical Care Vans," are being provided by the State, the service is to be operated by and the vehicle is to be stationed at Children's Memorial Hospital. Under these circumstances, the license exemption of Section 103-2 would not apply: ". . . provided, further, that an ambulance operated by a State, County, Municipal or other governmental agency, shall not be required to be licensed."

Therefore, it is our legal opinion that the aforesaid emergency ambulance service to be operated by Children's Memorial Hospital must be licensed and a license fee will be required pursuant to Chapter 103 of the Municipal Code of Chicago.

PRIVATE TRANSPORTATION SERVICE FOR
THE HANDICAPPED

*(Commissioner, Public Vehicle License Commission—
B. R.—February 7, 1975)*

You request an opinion from this office as to whether the captioned service falls within your jurisdiction. We have reviewed Chapters 28 and 103 of the

Municipal Code of Chicago and it is our legal opinion that the aforesaid service is not subject to your regulation thereunder.

Upon review of Illinois State Statutes and a discussion with the Illinois Secretary of State's Office, we conclude that the bus service for physically handicapped persons is regulated pursuant to Chapter 95½, Ill. Rev. Stat., 1973, Sections 8-101 et. seq. and 13-101 et seq.

PUBLIC PASSENGER VEHICLE NON-COMPLIANCE WITH CODE

*(Commissioner, Public Vehicle License Commission—
B. R.—June 13, 1975)*

We are in receipt of your recent letter in which you inquire as to the procedure to follow with respect to the revocation of public passenger vehicle licenses which may not comply with the provisions of Section 28-4.1 of the Municipal Code of Chicago. It is our understanding that these vehicles have two doors on either side of the front seat but only one door, on the right hand side, for passengers in the back seats.

You have explained in your letter that manufacturers have ceased to construct vehicles (of the van and panel truck nature) with two doors for passengers in the back seats. Also, that the two door requirement will necessitate work by a customizer who specializes in extreme body modifications. Such modifications when made, you assert, would have to be approved by either the National Safety Council or the United States Transportation Committee, a process which might take up to two years duration.

Section 28-4.1 of the Municipal Code of Chicago reads as follows:

"No vehicle shall be licensed as a public passenger vehicle unless it has two doors on each side, and no vehicle having a seating capacity for more than eight adult passengers shall be licensed unless it has two doors with fixed aisle space for access to said doors."

It is our interpretation that said Section was passed by our City Council as a safety measure to provide speedy egress from a vehicle by passengers in an emergency situation. Our information is that the three vehicles, which are currently licensed, have back doors which can provide ingress and egress although they lack a door on the right hand side for passengers in the back seats. By insuring that the back doors are designated as emergency exits for the said three vehicles, then it is our opinion that the same would be in technical compliance with the intent of Section 28-4.1. In fact where there is a rollover accident and the vehicle is lying on its side, the back doors would not be shut-off to escape while two doors on the overturned side would be closed.

We would recommend that as to the three vehicles which are presently licensed that said licenses not be revoked. Further, we would instruct you not to license any other public passenger vehicles which are not in strict compliance with Section 28-4.1.

It is advisable that you, at the earliest possible time, take appropriate action for the purpose of proposing an amendment to Section 28-4.1 to eliminate the problems which you have discussed in your letter while maintaining the public safety intent of this Section.

TEMPORARY PUBLIC CHAUFFEUR'S LICENSE

*(Commissioner, Public Vehicle License Commission—
B. R.—October 15, 1975)*

You request an opinion from this office as to whether there are any time limitations applicable to the issuance of temporary public chauffeur's licenses. You indicate that temporary public chauffeur's licenses have been restricted to a period of five days with additional five day extensions where the circumstances warrant the same. Due to the processing of applications for police officer employment, you assert that you have been advised that the Police Department's investigation of the background of public chauffeur applicants may take as long as two to three months. Therefore, the question arises whether temporary public chauffeur licenses can be granted for a period of up to three months while the Police Department investigation is being concluded.

Section 28.1-4 of the Municipal Code of Chicago reads, in part, as follows:

"Pending such investigation [by the Police Department into the character and reputation of the applicant] the Commissioner may issue a temporary permit authorizing the applicant to drive a public passenger vehicle until the time designated in such permit. If the investigation is not completed by that time the commissioner may, in his discretion, extend the time of such permit until such further time as in the opinion of the commissioner the investigation can be completed."

It is our legal opinion that Section 28.1-4 does not place any time limitations upon the issuance of public chauffeur's licenses. Further, you, as Commissioner, may exercise your discretion and keep temporary chauffeur's licenses in effect for a period of three months provided that said time period is designated either in the initial license or upon modification of the initial license.⁹

CHAUFFEUR'S LICENSE FOR HANDICAPPED

*(Commissioner, Public Vehicle License Commission—
B. R.—November 17, 1975)*

We are in receipt of your letter in which you request an opinion from this office concerning the captioned subject matter. In formulating our response, we have reviewed Chapter 28 of the Municipal Code of Chicago and Sections 13-2 and 65-21 et seq. of Chapter 38, Ill. Rev. Stat. (1973).

It is our legal opinion that the denial of a public chauffeur's license to a handicapped person is unlawful and contrary to public policy unless it can be shown that the particular handicap prevents the applicant from performing the requisite duties and responsibilities of his or her employment.

NO SIMULTANEOUS ISSUANCE: LIVERY AND TAXICAB LICENSES

*(Commissioner, Department of Consumer Sales, Weights
and Measures—J. P. D.—February 5, 1976)*

Your memorandum of February 2, 1976, requesting whether or not the affidavit of Anthony F. Ribaldo complies with 28-19 of the Municipal Code of the City of Chicago, has been referred to the undersigned for reply.

Section 28-19 of the Municipal Code states that "no person shall be qualified for a livery vehicle license and a taxi cab license at the same time."

I have examined the affidavit of Anthony F. Ribaldo. Said affidavit states that the purpose of Mr. Ribaldo's Corporation is limited to conducting a limousine business. Further, that the Corporation has not in the past, at this time, nor shall it in the future conduct a taxi cab business, nor is it affiliated with any taxi cab business. Based on the contents of said affidavit it is the opinion of our office that the affidavit of Mr. Anthony F. Ribaldo is in compliance with Section 28-19 of the Municipal Code of the City of Chicago.

REGULATION OF TRANSPORTATION SERVICE FOR THE HANDICAPPED

*(Home Transportation Coordinator, Cook County Hospital—
B. R.—June 17, 1976)*

Your letter to Commissioner Jane Byrne, concerning the captioned matter, has been referred to the writer for reply. Let me assure you that it is not the intention of any Agency of the City of Chicago to unlawfully interfere with the transportation of physically handicapped patients in their movement to out-patient facilities for treatment and therapy.

You indicate that you are aware that the Stewart Bus Company must comply with all laws applying to them. It is our concern that any company providing service for the transportation of physically handicapped patients should have appropriate insurance coverages and that the vehicles employed in the service should be inspected on a regular basis.

Kindly be advised that the Illinois Commerce Commission has ruled that the transportation of physically handicapped patients by motor vehicle falls within their regulatory jurisdiction. The Commission has issued certificates of public convenience and necessity to Illinois Medi-car, Inc., Travel Assist, Inc., Chicago Medical Transport Corporation and James Medi-car, Inc. for the transportation of non-ambulatory, invalid and convalescent persons.

By assuming jurisdiction in this area, the Commission requires insurance coverage by the carrier, and the carrier's vehicles will be regularly inspected by the Illinois Department of Transportation. This regulation satisfies our concern which we expressed to you earlier in this letter.

We would suggest that you notify the appropriate officials of the Stewart Bus Company to apply to the Illinois Commerce Commission for a certificate of public convenience and necessity to transport physically handicapped patients. In this way, the Company may secure State of Illinois operating authority to conduct its business.

NON-DISCRIMINATORY TESTING PROCEDURES

*(Commissioner, Department of Consumer Sales, Weights and
Measures—J. K. M.—October 7, 1976)*

Our office is pleased to report that the lawsuit filed in the United States District Court alleging that your office discriminated against minorities in the granting of public chauffeur's licenses has been dismissed. The dismissal of this

case came when we demonstrated to the Court the testing procedures followed by your office in the granting of said licenses. Both the Court and plaintiffs' counsel agree that no step in this procedure amounted to a violation of the civil rights of any person. The case was therefore dismissed.

FEE FOR DUPLICATE VEHICLE TAX EMBLEM

(City Clerk—B. R.—April 25, 1977)

Your letter of April 21, 1977 has been referred to the writer for reply. You inquire as to the current fee for the issuance of a duplicate Chicago vehicle tax windshield emblem.

Chapter 29 of the Municipal Code of Chicago deals with the issuance and transfer of personal motor vehicle licenses. However, Chapter 29 does not provide for the issuance and fees for duplicate licenses. This subject matter is covered in Section 101-21 of the Code:

"In case any licensee who has been furnished a plate, badge, tag, emblem, or other insigne in accordance with the provision of this Code shall lose the same, it shall be within the discretion of the Mayor to authorize the issuance of a duplicate insigne, upon the making of an affidavit of loss by such person and the payment of a fee of five dollars to the Director of Revenue."

Therefore, it is our legal opinion that there is a fee of five dollars required for the issuance of a duplicate Chicago vehicle tax windshield emblem.

REVOCATION OF CHAUFFEUR'S LICENSE

(Commissioner, Department of Consumer Sales, Weights and Measures—R. L. T.—October 20, 1977)

By this letter, I wish to confirm the procedures for disciplining taxi cab drivers as holders of Public Vehicle Chauffeur's Licenses. In the lawsuit of *Menconi v. Bilandic*, No. 75 C 1550, I have informed Judge Crowley that these procedures are, and continue to remain in effect. I have spoken with both Tom Geary of your office, and Vincent Gavin of the Mayor's License Commission in this regard.

It is understood that in situations where the Department of Consumer Sales, Weights and Measures has conducted a disciplinary hearing and imposed a suspension upon a licensee, no hearing officer or employee of your office will offer advice or recommendations as to the advisability of a licensee requesting a second hearing before the Mayor's License Commission. Employees are only to inform the licensee of the procedures utilized to request a second hearing. Employees of the Mayor's License Commission will continue to follow these same procedures.

In all situations where the Department of Consumer Sales, Weights and Measures deems revocation of the chauffeur's license to be a suitable penalty for a driver's actions, such revocation proceedings will continue to be brought originally before the Mayor's License Commission. The Department of Consumer Sales, Weights and Measures will hold no hearings in such cases.

The Corporation Counsel's Office has determined that in prosecuting cases before the Mayor's License Commission which were originally brought before a hearing officer of the Department of Consumer Sales, Weights and Measures the penalty of revocation will not be requested, and thus cannot be imposed.

PRIVATE CAR POOL

(*R. R.—B. R.—June 5, 1978*)

You indicate in your letter to the writer that Motorola Inc. plans to initiate a Van Pool Program for transportation of its employees at the Schaumburg, Illinois facility. In discussing the aforesaid Program, you refer to our Opinion dated August 20, 1974 with respect to a similar effort undertaken by Montgomery Ward & Company, Inc. You inquire whether that Opinion would apply to the proposed Program of Motorola Inc.

It is the writer's legal judgment that the proposed Program of Motorola Inc. would not be governed by Chapter 28 of the Municipal Code of Chicago. The Executive and Legislative policy of the City of Chicago is to discourage the use of the private automobile and to encourage the use of mass transit systems and motor pools for transportation purposes.

We commend Motorola Inc. for its efforts to reduce traffic congestions, alleviate parking problems, curtail automotive emissions and to conserve fuel through its Van Pool Program. You can be assured of the City of Chicago's support for your undertakings in this regard.

MEDI-CAR LICENSES

(*Administrator, Technical Services, Office of the
Secretary of State—B. R.—June 23, 1978*)

We are in receipt of your letter to the Corporation Counsel, William R. Quinlan, in which you assert that commencing with the 1979 license calendar year that the Office of the Secretary of State will require that all motor vehicles, commonly known as "Medi-Cars," be licensed with livery registration. You also express the opinion that "Medi-Cars" are livery vehicles.

For the past two years the Illinois Commerce Commission has ruled, on numerous occasions, that Medi-Cars are public utilities subject to the jurisdiction of the Commission. In light, thereof, the Commission has issued certificates of public convenience and necessity to many different Medi-Car operators.

Section 28-2 of the Municipal Code of Chicago requires livery vehicles to be licensed for operations within the City of Chicago. There are two exceptions to Section 28-2. One exception applies to vehicles operated by a metropolitan transit authority and the other to public utility vehicles. Since Medi-Cars are currently regulated as public utilities by the Illinois Commerce Commission, the City of Chicago has not required that said vehicles obtain a livery license for operations within the City. It is our understanding that Medi-Cars operate within eight Counties within the State of Illinois. Should this subject require further attention, kindly contact the writer.

Section C.—AMUSEMENT LICENSE AND TAX

STATE LICENSE EXEMPTION

(E. S. R.—D. P.—February 7, 1975)

Your recent letter to this office dated February 6, 1975, requests an opinion from the Corporation Counsel of the City of Chicago as to whether any licensing will be necessary for the Polo Club of Chicago, a non-profit corporation, to operate in an armory which is a state-owned facility.

The stated purposes of the contract with the Armory Board relative to the use of the armory facility located at 234 East Chicago Avenue, Chicago, Illinois, are to permit the Polo Club of Chicago to use the armory facilities for the playing of polo games, to provide stable space for polo ponies, for morning exercise, for stick and ball, and for the purpose of providing supervised public riding instruction for the residents of the City of Chicago and the State of Illinois.

Section 104.1-2 of the Municipal Code of Chicago prohibits any person from operating, for gain, or profit any amusement not exempted in Section 104.1-1 of the Municipal Code of Chicago without first obtaining a Public Place of Amusement License. However, it appears that the Armory Board of the State of Illinois is an agency of the State; the City of Chicago does not license State facilities.

It is therefore the opinion of the Office of the Corporation Counsel of the City of Chicago that since the armory facility involved is a State-owned facility, no license will be required, but that an Amusement and Entertainment Tax under Sections 104-1, 104-2 and 104-3 of the Municipal Code of Chicago will be applicable, for the private operations of the Polo Club of Chicago.

AUTOMATIC AMUSEMENT DEVICES

(N. K. B.—M. L. R.—April 25, 1975)

Please be advised that your affidavits and accompanying attachments seeking approval for licensing of certain automatic amusement devices have been carefully reviewed by the Automatic Amusement Device Panel for the City of Chicago. The amusement games known as "QWAK," "TRAK-10," "PUR-SUIT," and "PONG" appear to conform substantially with existing local laws so that authorization can be given to issue licenses for same. However, authorization for licensing cannot be granted for the amusement game known as "PING PONG," because of the free games provision outlined in your affidavit.

Before giving the Department of Revenue of the City of Chicago authority to issue licenses for the above games in question, it will be necessary for your company to furnish this office with additional information. Section 157.102 of the Illinois Business Corporation Act (Chap. 32, Illinois Revised Statutes, 1973) requires a foreign corporation organized for profit to procure a certificate of authority from the Secretary of State before it transacts business in this State. Since Atari, Inc., is not listed in the Secretary of State's Foreign Corporation Index, please forward a detailed summary of your business activities in the State of Illinois, both present and that contemplated in the future, i.e., offices

within this State, warehouses, agents and salesmen, advertising, soliciting orders, where contracts for sale are consummated, etc. If such activities do not require your corporation to have a certificate of authority from the Secretary of State, we will then act to authorize the issuance of licenses for your amusement devices.

PLACE OF AMUSEMENT LICENSING REQUIREMENTS

*(Chief Revenue Analyst, Department of Revenue—
G. M. K.—May 13, 1976)*

Your inquiry concerning the injunction in the above case has been referred to me by the Corporation Counsel. The injunction entered on April 7, 1975, is still in full force and effect, even though an appeal is currently pending before the U.S. Court of Appeals for the 7th Circuit. It should first be noted that the injunction deals solely with public place of amusement licenses for motion picture theaters and has no effect upon Paragraph 101-5, M.C.C., as applied to other types of licenses. Therefore, your inquiry may be restated as follows: In the licensing of motion picture theaters as public places of amusement, may the Director of Revenue require fire, police and building inspections?

Motion picture theaters are licensed as public places of amusement pursuant to Chapter 104.1 of the Municipal Code. Paragraph 104.1-4, M.C.C., requires that applications be forwarded to the Commissioner of Buildings, the Director of the Bureau of Fire Prevention and the Superintendent of Police and that those officers certify to the Mayor whether the applicant is qualified and complies with the provision of the code relating to his department. The court, at Paragraph 4, found that the City had authority to require a license based upon the zoning, building and fire regulations of the Municipal Code of Chicago. Therefore, the injunction does not affect the requirement of Paragraph 104.1-4, M.C.C., that the Commissioner of Buildings and the Director of the Bureau of Fire Prevention certify to the Mayor that the applicant complies with provisions of the code relating to his department. However, with respect to the Superintendent of Police, the only provision of the code concerning his department with which an applicant must comply is set forth in Paragraph 101-5, M.C.C., with respect to being "a fit and proper person." The court, at Paragraph 7, found that this requirement as set forth in Paragraph 101-5, M.C.C., was unconstitutional. Therefore, the injunction does prohibit the Superintendent of Police from conducting any investigation into the personal qualifications of an applicant. The injunction does not affect the authority of the Superintendent of Police to enforce the provisions of other ordinances or statutes as they apply to the operation of motion picture theaters.

In summary, the status of public place of amusement licenses for motion picture theaters is as follows:

- 1) a license is required;
- 2) applicant must comply with zoning, building, and fire regulations of the Municipal Code;
- 3) applicant is not subject to investigation of his personal qualifications for a license;
- 4) licenses must abide by provisions of ordinances and statutes in the operation of a motion picture theater.

AMUSEMENT DEVICE TAX DECALS

*(Acting Director of Revenue—J. P. F.—
September 15, 1978)*

Your letter of September 12, 1978 regarding your memorandum of April 12, 1978 has been assigned to the undersigned for response.

Since April 21, I have been in contact with Mr. Sidney Norin of your office on several occasions. Mr. Norin has told me of a report prepared by your office. This report indicates that Tops Vending has failed to purchase hundreds of Automatic Amusement Device tax decals. Mr. Norin later told me that this report is missing, and that I would get a copy when it is located.

It is the opinion of this Assistant Corporation Counsel that changes can be brought with the information we have at the present time. However, we would have a greater chance for revocation and would do a more thorough job with the aforementioned report.

KIDDIE RIDES

*(Acting Director, Department of Revenue—J. P. F.—
March 23, 1979)*

Your inquiry on "Kiddie Rides" has been assigned to the undersigned for response. Your specific question is whether "Kiddie Rides" are considered Automatic Amusement Devices for the purpose of being licensed as an Arcade under §104.2-9 of the Municipal Code of Chicago.

Since these machines are coin operated and are provided for the amusement of their users, it is the opinion of this Assistant Corporation Counsel that these "Kiddie Rides" should be counted with other Automatic Amusement Devices when determining the number of Automatic Amusement Devices on a premises. Such Rides require an Automatic Amusement Devices tax stamp. All Automatic Amusement Devices are to be taken into consideration when determining whether an establishment requires an Arcade license under §104.2-9 of the Municipal Code of Chicago.

FOOD PURVEYOR'S LICENSE
VIOLATION

*(Acting Superintendent of Police—W. T. O.—
December 14, 1979)*

Your letter addressed to William R. Quinlan, Corporation Counsel, has been referred to the undersigned for consideration and response. The issues which were raised are:

1. Whether not-for-profit incorporation allows the Candy Club to operate without having a public place of amusement and food purveyor's license.
2. Whether the manager and employees of the Candy Club should be charged with violating Section 193-2 of the Municipal Code of the City of Chicago as inmates of a disorderly house.

3. Whether citations may continue to be issued while the original license violation convictions are being appealed.

4. Whether police officers may make a physical arrest for the license violations and the manager of the premises be taken into custody each time the violations exist.

Not-for-profit incorporation does not allow the Candy Club to operate without having a public place of amusement and food purveyor's license. On March 6, 1979, Judge Wallace Kargman of the Circuit Court of Cook County found the defendants guilty of failure to have the required licenses since the Candy Club failed to prove that its operations were indeed not-for-profit.

The manager and employees of the Candy Club should not be charged with violation of Section 193-2 of the Municipal Code of the City of Chicago as inmates of a disorderly house. In the case of *Foster v. Zeeko*, 540 F. 2d 1310 (1976), the United States District Court for the Northern District of Illinois found Section 193-2 to be unconstitutional on its face.

As to whether citations may continue to be issued while the original convictions are being appealed, there is no restriction on issuing citations for subsequent violations while the appeal is in the process if the ordinance violations continue.

Finally, it appears that a police officer has the option of issuing a non-traffic citation or making a physical arrest for not having a public place of amusement or food purveyor's license as required by law. Therefore, it would be appropriate to take license violators into custody if the facts indicate that the police officer, in exercising this option, is not harassing or discriminating against the defendants.

Section D. OTHER LICENSES AND PERMITS

ARMORED CAR CHECK CASHING SERVICE

(Alderman—M. L. R.—May 13, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion as to whether a currency exchange license is needed to operate an armored car for the cashing of checks.

Please be advised that although the City Council of Chicago enacted an ordinance regulating currency exchanges in 1943 (Chapter 115.1 of the Municipal Code of Chicago), this ordinance was invalidated in the case of *Arnold v. City of Chicago*, 387 Ill. 532. At the present time, however, the currency exchange business is regulated by the State of Illinois under the Community Currency Exchange Act, Ill. Rev. Stat. 1973, Chapter 16½ § 30-56.3. This Act requires an "ambulatory currency exchange" to be licensed for the conduct of its business for each separate location served (see section 32 of the Act). The annual license fee for each location served is twenty-five dollars.

COMPENSATION FOR USE OF KINZIE STREET RAMP

*(Deputy Real Estate Agent, Comptroller's Office—
E. L. N.—November 7, 1974)*

An opinion has been requested of this office concerning the renewal of a license to use the East Lateral Approach to the Franklin-Orleans Viaduct by the Merchandise Mart designated as the Kinzie Street ramp.

The east lateral approach ramp to the Franklin-Orleans Street viaduct occupies portions of West Kinzie Street and was constructed pursuant to the terms of the 1916 Ordinance providing for the construction of the Franklin-Orleans bridge, viaduct and viaduct approaches ("1916 Ordinance"). The east lateral approach is approximately 40' x 725' and extends from the east line of North Orleans Street to the west line of Wells Street and occupies the following three parcels of land shown on the attached plat:

Parcel A: The South sixteen (16) feet of that part of West Kinzie Street North of and adjoining the North line of Block Six (6) and the North line of said Block Six (6) produced East eighty (80) feet in the Original Town of Chicago in the South Half of Section Nine (9), Township Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian being further described as the South Sixteen (16) feet of that part of West Kinzie Street lying between the East line of North Franklin Street and the East line of Orleans Street.

Parcel B: A strip of land twenty-four (24) feet in width south of an adjacent to the original south line of West Kinzie Street and extending from Orleans Street on the west to the west line of Wells Street on the east being also described as Lot One (1) (except that part thereof falling in Parcel A) of Marshall Field & Company Resubdivision of Blocks Five (5) and Six (6) of the Original Town of Chicago with all vacated streets and alleys within said blocks; original North Water Street vacated south of said blocks; Franklin Street vacated between said blocks from Kinzie Street to the north dock line of the Chicago River; Lot One (1) in Thomas' Resubdivision of that part of Carroll Avenue vacated lying between Blocks Six (6) and Fifteen (15) of the Original Town of Chicago and a portion of Kinzie Street vacated under the terms of the Ordinance, all in the Southeast Quarter of Section Nine (9), Township Thirty-nine (39) North, Range Fourteen (14) East of the Third Principal Meridian.

Parcel C: The South sixteen (16) feet of that part of West Kinzie Street lying between the West line of North Wells Street and the East line of vacated North Franklin Street extended North.

Parcels A and B are owned by the Merchandise Mart Owners. Parcel A was acquired by vacation pursuant to Section 12 of the 1916 Ordinance. The City of Chicago was granted the right by Section 4 of the 1916 Ordinance to occupy Parcels A and B without charge as a public right-of-way. Parcel C is a non-vacated portion of West Kinzie Street which is owned by the City of Chicago. Pursuant to the terms of the 1916 Ordinance the east lateral approach ramp was constructed over, and presently occupies Parcels A, B and C.

The East lateral approach ramp, by an ordinance passed December 19, 1962, page 8812 of the Journal of the Proceedings, granted the Merchandise Mart Owners the right to occupy by permit the entire east lateral approach

ramp for a three-year period. The permit has been renewed from time to time and the Merchandise Mart has continuously occupied the east lateral approach since December 19, 1926. The permit describes the area as

"... the Kinzie Street ramp forty feet by seven hundred twenty-five feet lying immediately north of the Merchandise Mart and extending from the east line of N. Orleans Street to the west line of N. Wells Street. . . ."

The current *annual permit fee* is \$3,709 and has been paid through November 22, 1974.

However, the City of Chicago and the Merchandise Mart Owners entered into an agreement dated June 24, 1974, approved by the City Council June 12, 1974, and recorded with the Cook County Recorder of Deeds, as Document No. 22781631 which relates to certain easements and the release of rights between the parties. By Section 1 of the Agreement the City of Chicago released its right to occupy Parcels A and B pursuant to the 1916 Ordinance:

"1. The City of Chicago hereby releases, relinquishes and disclaims such rights which the City of Chicago may have under the 1916 Ordinance to occupy with and use for public travel the structure of the East lateral approach to the Franklin-Orleans Street Viaduct located over Parcels A and B, title to which is owned by (Merchandise Mart) Owners."

2. The City of Chicago hereby grants to the (Merchandise Mart) Owners permission and authority to maintain on Parcel "C" the existing portions of the East Lateral Approach to the Franklin-Orleans Viaduct now located thereon. The right and authority herein granted shall terminate when the East Lateral Approach shall be razed or destroyed, *and the City of Chicago releases any claim which it may now have or which it may have in the future for compensation on account of such grant of authority and permission to maintain on Parcel "C" the existing portions of the East Lateral Approach to the Franklin-Orleans Viaduct now located thereon.*"

It is clear from a reading of said Agreement that the City has relinquished its interest in the ramp for Parcels A and B, and has no claim for compensation as to the ramp Parcel C so long as the East Lateral Approach shall remain in existence.

AUCTIONEERS RESIDENCE REQUIREMENT

(*Director, Department of Revenue—D. P.—
November 19, 1974*)

Your recent memorandum addressed to Richard L. Curry requests information with respect to the validity of the residence requirement for possession of a Chicago auctioneer's license, Municipal Code of the City of Chicago, chapter 106, section 160-3.

It is the opinion of this office that the residence requirement is unconstitutional. In *City of Elgin v. Winchester*, 300 Ill. 214 (1921), the Illinois Supreme Court stated that:

"[a] statute or ordinance which in imposing a license tax discriminates in favor of the residents of a state or city and against non-residents of the same class is unconstitutional."

This view was reaffirmed in *Larson v. City of Rockford*, 371 Ill. 441 (1937) where the court held that "arbitrary discrimination between residents and non-residents in the issuance of licenses or the fees charged will invalidate a municipal ordinance." The cases seem to be grounded upon the principle that a distinction between residents and non-residents is invalid where it has no reasonable relationship to the purpose of the ordinance.

The regulation of auctioneers does not appear reasonably to be furthered by excluding non-residents. While the Illinois cases do not specifically consider auctioneer's licenses, the Supreme Court of Florida in *Dusenbury v. Cheaney*, 121 So. 567 (1929) has directly considered the question and we believe its reasoning persuasive in holding such a distinction invalid.

Accordingly, this office will prepare an ordinance amendment for early presentation to the City Council.

REGULATION OF CLOSED CIRCUIT TELEVISION

(*M. J. S.—R. R.—June 13, 1975*)

This letter is in response to your request of March 6, 1975 for an opinion dealing with the possible application of any city ordinance to the proposed closed circuit television system planned by your client. It is our understanding that your client intends the possible transmission of movie films originating wholly from its own facilities and to be transmitted either through Illinois Bell Telephone Company lines and cables or your client's own microwave or laser beam equipment.

Based upon the information supplied in your letter, it is the conclusion of the Corporation Counsel that at the present time there is no City of Chicago ordinance which prohibits, regulates or requires the licensing of the proposed closed circuit system as such. Of course depending upon the particular mode of transmission finally selected by your client, certain electrical regulations may apply, as may, for example, certain restrictions and facilities. In the absence of more specific information no opinion concerning such details can be given.

MOTION PICTURE EDUCATIONAL INSTITUTIONAL EXEMPTION

(*Administration Director, Chicago Film Board—
D. P.—October 30, 1975*)

Your letter to the Corporation Counsel of October 16, 1975 asks for an opinion of this office finding that the Chicago International Film Festival is to be considered an "educational institution . . . having educational justification" for the exhibition of films.

Your letter indicates that the festival is a not-for-profit corporation which annually exhibits films during the month of November. As a rule the films are publicly shown once and are reviewed by a panel of judges. To encourage community interest in cinematography, prizes are awarded to films in categories such as science, medicine, business and industry.

Motion pictures exhibited to an audience comprised solely of persons over the age of 17 may in any event be exhibited without inspection and without

payment of any permit fee. But in view of the information supplied above we are of the opinion that the festival does indeed qualify for the educational institutional exemption under Chapter 155, section 155-1, of the Municipal Code of the City of Chicago.

Accordingly, so long as the facts above remain the same, thus not requiring further review, it will not be necessary for films exhibited as a part of the festival to be submitted for review. Of course, any film that is exhibited in the festival and subsequently intended for distribution within the City must, prior to such distribution, be submitted according to the procedures set out in the Municipal Code.

AUCTIONEER'S LICENSE EXEMPTION

*(Deputy Director, Department of Revenue—
J. P. D.—January 29, 1976)*

In response to your memorandum of January 26, 1976, regarding auctioneer's license, Chapter 106, Section 106-2 of the Municipal Code of the City of Chicago requires the licensing of auctioneers. It, however, is an exception to said Section if the auctioneer is acting under legal process.

It appears from the documents which were forwarded to our office that this auction of the assets of R.E.A. is being held under Court Order. It is, therefore, the opinion of our office that no license or license fee is required in this case.

SINGLE TRIP PERMIT FEE EXEMPTION

*(Acting Commissioner, Department of Aviation—
B. R.—March 29, 1976)*

You request an opinion from this office as to whether the captioned Transit Commission is subject to the payment of single trip permit fees as provided in Section 37-13.3 of the Municipal Code of Chicago.

We have reviewed Section 37-13.3 and it is our legal opinion that the said Transit Commission is not exempt from the payment of single trip permit fees and the same is therefore required under our Ordinance.

REASONABLE RELATION TO REGULATORY BURDEN—LICENSE FEE VALIDITY

(Deputy Mayor—M. K.—July 29, 1977)

You have requested an opinion from this office regarding a letter in which the law office of Jenner and Block, informed their client, the Chicago Cigarette Merchants Association, that ch. 178, sec. 12 of the Chicago Municipal Code, dealing with retail tobacco dealer's license fees, may be unconstitutional. That code section reads as follows:

"The license fee for a retail tobacco dealer's license shall be seventy-five dollars for the whole or any portion of the license period for which application is made. It is further provided that where cigarettes are sold by automatic coin-operated vending machines, the license fee shall be an

additional ten dollars per machine, regardless of whether such machines are located in places which are open to the public."

The letter reasons that if the facts show the \$60,000.00 in contested fees, collected pursuant to the above code section, unreasonably exceeds the cost of regulation incurred by the city during the 6 month period between January 1, 1976 and June 30, 1976, the ordinance should be held invalid and the excess repaid.

Additionally, the letter suggests that singling out cigarette vending machines to pay an additional license fee when no such additional fee is required of other vending machines, such as food vending machines, may constitute an unreasonable and thus unconstitutional classification.

It is the opinion of this office that this opinion is supportable neither by the law nor the facts of this case. As will be discussed in full below, the present ordinance's regulatory scheme clearly justifies the license fees charged.* Further, the separate classification of cigarette vending machines is reasonable.

Assuming, *arguendo*, that Chicago as a home rule unit of government lacks legislative approval to "license for revenue" under the present facts, the disproportionate burden argument is meritless. An analysis of the very cases relied upon in the letter supports this assertion: *Lamere v. City of Chicago*, 391 Ill. 552 (1945), rev'd in part, *National Drag Racing Enterprises v. Kendall County*, 54 Ill. 2d 83 (1972); *Arends v. Police Pension Fund*, 7 Ill. 2d 250 (1955); and *Chicago Heights v. Western Union*, 406 Ill. 428 (1950).

Lamere, *supra*, held that an annual license fee of \$50.00 on "automatic musical instruments" was disproportionate to the municipality's regulatory burden. In so deciding the court stated:

Municipalities are also limited in the exercise of the power and the fixing of license fee to the end that the amount exacted bears some reasonable relation to the burdens that such thing, business or occupation to be licensed casts upon the city. Such *additional burden may be incurred by the necessity of extra police supervision*. *Bauer v. City of Chicago*, 32, Ill. 259; *Condon v. Village of Forest Park*, 278 Ill. 218 (*Id.* p. 560; emphasis added).

What impressed the *Lamere* court was the fact that the challenged ordinance imposed only a few minor responsibilities on the regulating municipality, responsibilities which the court felt failed to warrant a \$50.00 annual license fee on each machine. In this regard the court noted:

"Aside from the provision prohibiting them from being played so as to disturb the peace and quiet of persons outside the premises where they are located, and the ban on the immoral and indecent records, there is no regulation of any character. *There is no provision for the inspection of the records, their censorship or registration*. Presumably, the only action the city would take in the event of a violation of the regularity measures mentioned would be to revoke the license. The annual fee being so far out of proportion to the burdens imposed, the ordinance cannot be sustained as a reasonable exercise of the police power." (*Id.* p. 561-562; emphasis added).

Similarly, the *Western Union* case, *supra*, dealt with an attempt by Chicago Heights to charge Western Union certain license fees for each new tele-

* The ordinance was amended in July 1, 1976 setting the license fee at \$65.00 semi-annually and apparently eliminating the additional vending machine fee.

phone, telegraph, electric light or steel railway pole erected in the city. In striking down the challenged fee as disproportionately related to the burdens upon the regulating municipality, the court reasoned:

"A closer scrutiny of the ordinance under attack discloses that there are no other essential features there ordained, except the collection and payment into the general treasury of the city of the fees therein provided for and consent to the erection and maintenance of any poles and wires by the city council. *No standards or specifications are prescribed. No inspection or supervision is required. No disposition is made of the fees to be paid thereunder*, except that they be paid to the city clerk and presumably into the general fund of the city. *The ordinance in so attempts to regulate.*" (*Western Union*, p. 433; emphasis added).

In *Arends, supra*, there is only passing reference by the court to the well settled rule that, as to regulatory licenses, the amount of the fee must bear "some reasonable relation" to the cost of regulation. (*Id.* p. 253). The case otherwise has no applicability here.

The city has no quarrel with the law delineated in the cases. They helpfully demonstrate the factors a court will consider in determining the reasonableness of a regulatory fee—factors such as police supervision, prescribed standards and inspections, required records and registration, etc. The following references to the provisions of the instant ordinance clearly indicates the presence of those same factors, and more, here.

Sections 178-9 through 178-24 relate to licensing of retail tobacco dealers. With respect to such licensing, section 178-11 mandates that the Superintendent of Police "shall cause an investigation to be made of the character and reputation of the applicant . . . and of whether the premises named in said application comply with the police regulations of this code. . . ." Section 178-15 requires every retail tobacco dealer to keep records of all purchases of cigarettes with all relevant data concerning said purchases. This section further directs that a copy of said records shall be delivered "to the superintendent of police" once every month. Such records and all cigarettes purchased shall be "open at all reasonable times to the inspection of the mayor, any member of the police force, . . . the board of health," and any person authorized by the police or health departments.

Section 178-17 directs that the Board of Health shall "inspect and examine all places where cigarettes are licensed to be sold" for the purpose of causing the enforcement of all related state and municipal laws. The board of health is further entrusted by this section with conducting chemical analyses on cigarettes, collected at random by the board from retailers, and with keeping records of such analyses for the inspection of the public. Section 178-18 and 178-19 strictly prohibit the sale of cigarettes and cigarette paraphernalia to minors or near schools, respectively.

Section 178-21.1 directs that all persons having possession and control of the vending machines shall file an application for a certificate of registration for each vending machine. Such application shall state all pertinent information, including the name and address of the owner of the machine, the place where this machine will be used, the nature of the business conducted in that place, the name of the maker and factory number, and the name and city license number of the retail tobacco dealer for whose use it is installed.

By the terms of Section 178-21.1 the superintendent of police is charged with the duty of investigating and verifying the facts stated in such an applica-

tion as well as conducting an investigation of the criminal history of the applicant. Upon the superintendent's approval of such application and the payment of the license fee, section 178-21.3 directs that the appropriate city agency issue a certificate of registration together with a sticker emblem bearing, *inter alia*, the words, "Registered Chicago Cigarette Vending Machine." Section 178-21.5 directs the city clerk to keep on file one copy of each application for certificate of registration and an index record of the location of each vending machine for which an application has been filed. Finally, Section 178-22 and 178-24 imposes fines upon violators of the ordinance.

Manifestly, the provisions of the above described regulatory scheme demand the man power, time, and resources of the police department, the board of health and the city clerk's office. It requires that detailed records be kept, in depth investigations be conducted, specimens of tobacco be chemically analyzed, and fines be imposed for violations.

In the present instance it is argued that \$60,000.00 in fees between January 1, 1976 and June 30, 1976 were paid. The then semi-annual license fee was \$65.00 plus an additional \$10.00 for cigarette vending machines. Even in the unlikely event that all the licensees qualified to pay the maximum fee then required, that is \$75.00, the number of licensees would then total 800. This probably is not the case since all retail tobacco dealers, of course, do not operate cigarette vending machines.

In any case, conducting the required type of on-going investigations, record keeping, chemical analysis and ordinance enforcement, etc., on 800 such retailers, on its face constitutes an expensive proposition. Thus, the ordinance itself presents a very strong case in support of the reasonableness of the challenged license fee. Any plaintiff would have the heavy, if not impossible, burden of proving otherwise.

Consequently, it is the opinion of this office that the challenged fee bears a reasonable relationship to the cost of regulating; repayment of the money in question, therefore, is not warranted.

A further argument suggests that the separate classification of cigarette vending machines and the imposition of an additional \$10.00 fee on such machines is an arbitrary and unreasonable classification. Such an argument is meritless.

First, the ordinance itself provides ample grounds in support of the reasonableness of the challenged classification. Section 178-23 reads:

178-23. To promote the public health, safety, morals and general welfare, to prevent the sale of cigarettes to minors under 18 years of age and to minimize the problems of enforcement under this ordinance, no cigarette vending machines shall be installed or used any place except and save only in rooms or areas of industrial commercial and mercantile establishments to which members of the general public are not invited or do not have access and where such machines shall be available for the use and convenience of the employees of such establishments. Every such machine installed or used on premises where minors under the age of eighteen are employed shall be under the constant supervision and surveillance of a responsible adult.

Clearly, the special classification was found necessary to limit access to cigarettes by minors. Certainly the health and safety of minors is of paramount

concern. Thus, the city council, by drafting the challenged ordinance and by imposing more stringent controls therein upon cigarette vending machines, legitimately exercised its police power in protecting the health and safety of minors. On this basis alone the classification is reasonable.

However, the point is raised that other vending machines, such as food vending machines, are not similarly controlled by ordinance. Even if this statement were true, it would not affect the reasonableness of the classification for the reasons described above. Notwithstanding the fact, however, the statement that food vending machines are not controlled by a regulatory ordinance is false. Chapter 130, Sections 130-32.2 to and including 130-32.10 of the Chicago Municipal Code sets up a regulatory scheme not unlike ch. 178, *supra*, for all automatic food vending machines.

The ordinance directs the board of health, *inter alia*, to inspect the food in the vending machines as well as the premises in which such machines are kept. The ordinance further establishes an annual license fee on the operators of such machines ranging from \$50.00 to \$150.00.

In conclusion, for the reasons stated above this office is of the opinion that the license fees in question are reasonable in that they bear a reasonable relation to the cost of regulating. Further, the separate classification of and imposition of an additional license fee upon cigarette vending machines constitutes a constitutionally valid classification by the City Council in the legitimate exercise of its police powers. Hence, the fees collected under the challenged ordinance were rightfully collected and rightfully retained by the City of Chicago.

LICENSING OF MICROWAVE TRANSMITTER

*(Chairman, Federal Communications Commission—
H. W.—May 22, 1979)*

The residents of the City of Chicago are very concerned and interested in the license and permit applications pending before your commission pertaining to the construction and operation of a microwave transmitter at 5341 South Keller Avenue in the City of Chicago, Illinois. The St. Turibius Area Community Life Council has presented us with a copy of their Petition to you, dated March 20, 1979, and their response to applicant's "Opposition to Petition to Deny."

Because of the potential impact and effect this transmitter operation may have on the surrounding residential area, the City of Chicago is hereby requesting that your commission defer any final action on the applications until such time as detailed studies are completed by the General Accounting Office and other agencies. In this matter, we are supplementing Congressman Fary's letter to the General Accounting Office requesting a health study on the effects of this installation.

Your confirmation and information on this matter will be greatly appreciated.

ELECTRICAL CONTRACTOR'S LICENSING REQUIREMENT

*(Board of License Examination and Registration—
J. P. D.—August 8, 1979)*

This letter is in response to the questions contained in your letters of June 13 and 28, 1979, concerning the qualifications of electrical contractors and supervising electricians for the City of Chicago.

First, with regard to the requirement for becoming an electrical engineer, please be informed, the Code requires an individual desiring to engage in the business of electrical contracting to apply for registration to the Board of License Examination and Registration and submit a \$25.00 fee to be paid annually. A fee is not required if the individual is already registered for the current year in another city or village within the State of Illinois.

Secondly, in answer to whether an electrical engineer is required to employ a supervising electrician before a certificate of registration can be issued, the Code requires that before any permit be issued to an electrical contractor, an individual must be appointed or employed to act as a supervising electrician.

CHAPTER VII BUILDING AND ZONING

Section A. BUILDING

CONFLICT OF INTEREST

*(Chairman, Chicago Plan Commission—R. L. C.—
July 25, 1973)*

Your letter of July 11, 1973 sets out in considerable detail the interest which The University of Chicago has in the Chicago Canal & Dock Company by reason of its endowment fund ownership of shares of stock in that corporation.

With that as the basis, you ask whether or not your Chairmanship of the Chicago Plan Commission is compromised by reason of these holdings of the University, and whether or not your position as a Professor with the University creates a conflict of interest which would compel your abstention from participating in Chicago Plan Commission hearings and deliberations relative to the Chicago Lake Front Ordinances.

Your long and distinguished career with The University of Chicago is common knowledge, as is the fact of the extensive and diversified holdings which The University of Chicago has in its endowment funds. The University of Chicago is a not-for-profit corporation, the earnings or financial stability of which in no fashion may inure to your personal benefit. Your position with The University of Chicago is that of a salaried professor who has achieved tenure in that position. These two facts in concert compel the conclusion that no conflict of interest legally exists in any action that you may take relative to the proposals relating to the Lake Front Ordinances now before the Chicago Plan Commission.

In approaching this problem, however, I would urge that you go further than that which is lawfully required in order that there be no appearance of impropriety or suggestion of conflict of interest on your part at the culmination of the Plan Commission's deliberations on these ordinances. I would earnestly suggest that you make a public disclosure of the facts contained in your letter of July 11, 1973 at the first meeting of the Chicago Plan Commission on this subject.

Your widely acclaimed appointment to the extremely important and sensitive position of Chairman of the Chicago Plan Commission would be rendered meaningless were you to disqualify yourself from every matter in which the vast holdings of The University of Chicago may or may not be affected. In this regard, it is important to note that the ordinances before the Chicago Plan Commission do not in and of themselves determine the potential for development in any specific parcel of property in the City. They merely create the format and guidelines under which future development must be undertaken. Thus, the action of the Plan Commission neither enhances nor diminishes the value of the University's holdings in the Chicago Canal & Dock Company.

McCORMICK PLACE INSPECTION FEES

(Chief, Bureau of Heating, Ventilation and Industrial
Sanitation—R. F. F.—May 1, 1974)

This letter is written in response to your recent inquiry concerning the liability of the Metropolitan Fair and Exposition Authority for annual inspection fees for City of Chicago building inspections at McCormick Place. The authority, in the attached letter from Mr. Jerome Kovarik, assistant general manager, suggests that because McCormick Place is a "public building" it is not subject to payment of building inspection fees.

It is our opinion that the authority is subject to payment of the inspection fees required by the ordinances of the City of Chicago.

Previously, this office has had occasion to comment on a situation somewhat similar to that presented here, which involved City inspection of buildings owned by the State of Illinois (22 Opinions of the Corporation Counsel 378 (1943)). Noting there that the General Assembly had invested the City with broad police power to regulate building construction within the City, and observing further that this power had not been "withdrawn or reinvested in any other state agencies," we concluded that the City not only had the authority to enforce its buildings ordinance with respect to the state-owned building in question, but also to collect the fees required for such inspections.

The reasoning in that opinion was based in large part upon *County of Cook v. City of Chicago*, 311 Ill. 234, 21 A.L.R. 442 (1924). There the County argued that since it was a subdivision and agency of the State, the City had no authority to enforce its ordinances as to County buildings. The Supreme Court held, however, that the County was obliged to comply with the ordinances of the City in which the building was located. The court noted that while the County was an agency of the state, it was not correct to say that the county was part of the state in the exercise of the police power. As "an agency of the state [the county] is likewise a creature of the state vested with only the powers conferred upon it by the state." (311 Ill. at 246-247).

This principle is acknowledged by one of the leading authorities on municipal corporation law, Prof. McQuillin, who states that municipal police powers "are applicable to state agencies, at least to the extent that the ordinances are reasonably necessary for the protection of the municipality's inhabitants." McQuillin, *Municipal Corporations*, sect. 24.55 (1969).

By virtue of a clear and specific grant of power (See 1970 Illinois Constitution, art. VII, sec. 6; Ill. Rev. Stat. 1973, ch. 24, pars. 11-32-1, et. seq., 11-34-1, et seq., 11-37-1, et seq.), municipalities are possessed with police power to enact and enforce fire and building codes for the protection of the health, safety and welfare of persons within their boundaries. In contrast, the general powers given the Authority relate to ownership, acquisition, leasing and maintenance of the exposition grounds and facilities, but the Authority is not given police powers similar to that of the City of Chicago. Thus, in the absence of some pre-emptive grant to the Authority, the fact that the Authority property qualifies as a "public building" does not relieve it from the obligation to comply with Chicago fire, building and electric codes, nor from the payment of such inspection fees.

Accordingly, it is the opinion of this office that the Metropolitan Fair and Exposition Authority is not exempt from liability for inspection fees incurred for inspections at McCormick Place.

VALIDITY OF SAFETY CODE EXEMPTION

(Alderman, Committee on Buildings and Zoning—
R. F. F.—June 27, 1974)

Proposed Amendments to Chapters 78 and 43 of the Municipal Code of Chicago have been submitted for our opinion. Because the proposals make the application of fire and other safety codes depend on whether the owner lives on the premises, the proposed amendments are invalid because they violate equal protection of the law guaranteed by the United States and Illinois Constitutions.

The proposal seeks to amend Chapter 78, Section 10 and Chapter 43, Section 2 of the Municipal Code of Chicago (attached hereto). These building code sections deal generally with building code restrictions and *building permits*. Presently, Chapter 78, Section 10 deals with restrictions upon the conversion of residential units to multi-dwelling units. This ordinance establishes general requirements for converting residential units and fire protection standards for such units. Its obvious purpose is to insure the health and safety of the residents of the converted units.

Similarly, Chapter 43, Section 1 requires a permit for the "erection, enlargement, alteration, removal, or demolition of any building . . . within the city. . . ." Chapter 43, Section 2 waives this requirement "for any minor repairs" not substantially affecting the structural efficiency or fire safety of the building. This exception is a manifestly reasonable exercise of the police power for the health, welfare and the safety of the residents of the municipality.

Specifically the proposed amendments would waive the safety requirements of Chapter 78, Section 10.2(a), (b), (d), (e), and (f) which read as follows:

"78-10.2. Conversions and enlargement of residential structures as provided in the preceding section shall be subject to the following requirements:

"(a) New or existing stairways shall be vertically separated from all other parts of the building with partitions providing fire resistance of not less than one hour.

"(b) The floor construction over the basement shall be of construction providing fire resistance of not less than one-half hour.

"(d) Except where a single unit complying with all requirements of section 67-4 is permitted, each dwelling shall have access to two vertical means of exit. Existing stairs may be of wood. New stairs shall comply with the requirement of chapter 67.

"(e) Stairways shall be enclosed as required in section 62-3. Soffits of stairs shall be protected as required in section 67-10.4."

However, the amendments in question purport to carve out of the above ordinances impermissible exceptions. The exception in each case is the same: where "an existing unit has been in existence as a converted unit for a period of not less than ten years" and where the "structure in which said converted unit is located shall be owner occupied" (proposed amendment, Chapter 78, Sections 10-4(a) and (b) and Chapter 43, Sections 2-1(a) and (b)) the existing ordinances shall not apply.

These proposed amendments attempt to create a separate class of property owner exempt from enforcement of the ordinances cited above. But such a legislative classification, in order not to be violative of the Equal Protection Clause of the Fourteenth Amendment must both (1) rest upon a *rational basis*, and (2) bear a reasonable relation to the object of the legislation sought. As a noted authority on municipal corporations has stated:

"Equal protection or due process of law definitely does require a basis of classification that is reasonable with reference to the purposes of an ordinance or law in question that results in a classification . . . must rest upon *reasonable and just differences* . . . the differences upon which classification may be exercised depend necessarily upon the object in view. . . ." 5 McQuillin, Municipal Corporations, Section 19.14, p. 431-432.

In particular,

"It is only where some persons . . . excluded from the operation of the law or ordinance are, as to the subject matter thereof, in no differentiable class from those included in its operation or where there is no fair reason for the law which would not require with equal force its extension to others whom it leaves untouched, that a law can be declared discriminatory in the sense of being arbitrary and unconstitutional. (Ibid., p. 434).

The Illinois Supreme Court has long affirmed these constitutional principles. They are enunciated in several recent opinions which clearly point up the fatal weakness of the proposed amendments. In *Lee v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago*, 31 Ill. 2d 252 (1964), a case dealing with the constitutionality of an amendment which purported to have created a special class of police officers eligible for pension credit, the court stated:

"A legislative classification of persons, to be valid, must rest on some difference which has a reasonable relation to the object of the legislation . . . If the classification is not based on a substantial and reasonable distinction in the situation and circumstances of the individuals embraced therein from those not so included the statute is invalid." (At p. 254).

(See also: *City of Monmouth v. Lorenz*, 30 Ill. 2d 60 (1963), *People v. Sherman*, 291 NE 2d 865 (1973), *People v. Sprinkle*, 4 Ill. App. 3d 6 (1972)).

The application of these principles to the present proposed amendments reveals the grave constitutional question raised as to their validity. As stated above, the amendments exempt only certain property owners from compliance with the requirements of specific building code ordinances, that is, only the class of multi-dwelling property owners of newly converted units who occupy the newly converted premises. This classification bears no apparent rational relationship to the objects of the ordinances amended. Since the health, welfare and safety of the inhabitants of dwellings converted from single to multi-dwelling units is the obvious purpose and effect of an ordinance, to exempt a building from the ordinance's operation simply because its owner is also an occupant of the premises, while at the same time holding non-resident owners to the ordinance requirements, is manifestly unreasonable and unfair. Certainly no rationale exists that would justify a lower standard of safety in a multi-dwelling unit occupied by its owner than in one so occupied. The dwelling's structural integrity and fire safety are conditions having no rational relation to whether the occupants are or are not also the owners. And certainly the safety regulations affecting other occupants of the premises should not be required to depend on the arbitrary condition of whether or not the owner lives on the premises.

Accordingly, the classification proposed in the amendments submitted lacks the requisite element of rationality necessary to its constitutional validity.

INCOMPATIBLE LAND USE—PERMIT DENIAL

*(Commissioner, Department of Buildings—R. L. H.—
September 4, 1974)*

An Order was entered in the Circuit Court of Cook County on February 13, 1973 in case number 69-CH-52226 wherein the owner of the above cited property was allowed to demolish the structure then remaining on the premises. The City was ordered to issue a building permit for the reconstruction of a hotel on the site so long as the new building did in no way exceed the number of rooms that were present in the demolished building and otherwise met all of the provisions of the Building Code.

When notification was received from the Federal Aviation Administration of the proposed construction (73-GL-1182-OE), the proponent indicated a building that was 28 feet 4 inches above ground which in addition to being in excess of the height allowed that close to Chicago Midway Airport pursuant to Section 5.9(1) of the Chicago Zoning Ordinance, was in excess of heights allowable under Part 77 of the Federal Aviation Regulations. Pursuant thereto, approval by your Department was withheld from the standpoint of Zoning and no further plan review was made.

The proponent attempted to revise the plans for the building to meet these objections but was unable to do so and, on February 8, 1974, the Federal Aviation Administration's Great Lakes Regional Office made a determination of hazard to air navigation and indicated that the proposed height of the building at 629.00 feet above Mean Sea Level was approximately 2 feet higher than Part 77 would allow.

Since the City of Chicago has been and is a recipient of federal grants for the improvement of Chicago Midway Airport and the grant agreements require the City to do all in its power to prevent the construction of hazards to air navigation, we advised your Department to refuse to issue a building permit for this construction based upon the FAA determination of hazard.

The proponents took an informal appeal from the local FAA decision to the Washington office and, after much discussion there, a new proposal was submitted (74-GL-1000-OE) where a 25.125 foot building is proposed to be built to a maximum height of 627.08 feet above Mean Sea Level which meets the criteria of both the Chicago Zoning Ordinance and Part 77 of the Federal Aviation Regulations.

The location of this proposed hotel construction is approximately 1000 feet from the end of Runway 22L at Chicago-Midway Airport and, as such, is not a proper location for this land use from the standpoints of noise and safety for the hotel tenants. To this end, we advised the FAA in a recent letter that although we could no longer object to the proposed construction on legal grounds related to violations of the Zoning Ordinance, it is still necessary to object on a basis of impropriety of land use from an environmental and safety standpoint. This position was also communicated to the proponent by the FAA in a letter which followed their recent letter indicating "no hazard" insofar as

Part 77 was concerned. We are enclosing both FAA letters for your files and information.

Currently, the proponent has on file with your Department a set of plans and a request for the issuance of a building permit and has also submitted to Harry Manley a copy of the FAA "no hazard" letter. We have advised Mr. Manley to approve the Zoning Review of this proposed construction since it does meet the criteria of the Zoning Ordinance.

It is our opinion, however, that a building permit should not be issued until there is a further Court Order requiring same which will give us one more opportunity (the only one, as a matter of fact) to advise the Court that a permit is being withheld on the basis of incompatible land use from the noise and safety aspects. If, after being made fully aware of these points, the Court Orders the permit issued, it can be issued with the knowledge and understanding on the part of the Court, the proponents, the FAA and the City that no complaints will ever be considered from the hotel owners, employees or tenants arising out of noise from the airport and aircraft flyovers and that any problems that may occur from either noise or from a possible crash at the site were occasioned solely and exclusively by the proponents of the hotel who persisted in the aforesaid construction in the face of the objections of both the City and Federal Governments.

It will be necessary then, in order to get one more chance at the Court, for the proponent to be refused a building permit in the face of the Order of Court of February 13, 1973, referred to hereinabove. The proponents will then be forced to cite you, as Commissioner of Buildings, into Court on a Petition for Contempt for failure to issue the said permit. An explanation will then be made to the Court outlining all of the possible hazards and, it is our expectation, the Court will again Order the issuance of the permit. At this point, the City has done all it could ever be expected to do and the permit should issue.

To this end, then, it is our suggestion that the application for permit presently in your Department be processed through all of the various construction review areas and any and all deficiencies found be discussed with the architects involved as is done in any other application for permit, the only difference being that when all is done, a permit be denied. Assuming that the plans will meet all of the Code requirements, a permit can then be issued immediately upon receipt of the Court Order if such is the case.

We further suggest that as soon as any Court petition is received by you in this matter, it be immediately forwarded to our office to the attention of the undersigned so it can be expeditiously handled.

If you have any questions in this matter, please call upon us at your convenience.

REGULATION EXEMPTION FOR ELECTRICAL EQUIPMENT

*(Deputy Commissioner, Bureau of Electrical Inspection—
B. R.—June 17, 1975)*

We have reviewed the correspondence between your Bureau and Mr. Philip M. Walker, Vice President and General Counsel of Telenet including the Memorandum Opinion, Order and Certificate of the Federal Communications Commissions in File No. P-C-8750.

In response to your inquiry, it is our legal opinion that the equipment of Telenet utilized for communications switching and transmission, which is a function of its "packet switching" services, is exempt from the electrical regulations of the Municipal Code of Chicago pursuant to Section 86-10(e) thereof.

PROPERTY REPORT REQUIREMENT— BUILDINGS GREATER THAN SIX UNITS

(*S. B. M., Attorney,—R. F. F.—June 27, 1978*)

This is in answer to your inquiry of June 26, 1978 concerning the application of the Chicago Condominium Ordinance (Chapter 100.2 of the Municipal Code of Chicago). You state that your client is the owner of an apartment building being converted to condominium ownership. It contains fewer than six residential units. However, four garages are also being sold as units and the total number of garage and apartment units is greater than six. You further state that no garage unit may be sold to other than an owner of a residential unit.

You ask whether, since fewer than six residential units are being offered for sale to the general public, it is necessary to prepare the property report pursuant to Section 100.2-5 of the Municipal Code of Chicago.

The object of the property report required by the Chicago condominium ordinance is to give prospective owners sufficient information to make a knowledgeable decision whether or not to purchase a condominium unit. However, because the higher cost in relation to the number of units, Section 100.2-5 exempts buildings with six or fewer units from this requirement. In your client's case, it is apparent that the garage units are relatively insignificant in relation to residential units. Because garage units may not be sold to other than owners of residential units, it is clear that there can be no more than six unit owners for the entire building. Since the Chicago condominium ordinance is intended to protect owners only in those cases where more than six unit owners are involved, no property report need be furnished in the situation you describe.

POWER TO ENFORCE REGULATIONS IN STATE AGENCY BUILDINGS

(*Commissioner, Department of Buildings—R. F. F.—
July 17, 1975*)

This letter is a response to your recent inquiry concerning the legality of granting the University of Illinois, Chicago Circle Campus, an exemption from the requirements of the building and electrical regulations of the City of Chicago. Mr. Barringer, Executive Assistant to the Vice President of the University, in a letter to you, suggested that the Circle Campus is exempt from such regulation because it is an agency of the State.

It is the opinion of this office that the University may not be accorded such an exemption.

The starting point in any discussion of the immunity of state entities from municipal regulations is the case of *County of Cook v. City of Chicago*, 311 Ill. 234 (1924), which has been continually cited in subsequent cases. The case involved the question of whether the County was exempt from the fire regulations of the city in the construction of a jail within Chicago. The Court stated that although the County was a State agency, it was not a part of the State and was

thus not accorded the supremacy of the State. Furthermore, the delegation of police power to the municipality empowered it to enact all regulations for the health and welfare of the public within its boundaries. Therefore, the court held, that since the county was not authorized to enact concomitant fire regulations within municipalities, it was required to comply with the proper exercise of the municipality's authority in this area.

That this rule applies to the present situation is made clear by the fact that the City of Chicago is specifically empowered by state law, to enact building regulations, while the enabling legislation of the University of Illinois makes no mention of those police powers. Illinois Municipal Code, § 11-30-4 (Ch. 24, par. 11-30-4, Ill. Rev. Stat. (1973)) states:

The corporate authorities of each municipality may prescribe the strength and manner of constructing all buildings, structures, and their accessories. . . .

and § 11-37-2 of the Code states:

Any municipality by ordinance may regulate the installation, alteration, and use of all electrical equipment . . . and may establish an electrical inspection division for this regulation.

Even if such specific grants of legislative authority were not present the City of Chicago has the power to enact such regulations under the home rule provision (Art. 7, sec. 6) of the 1970 Constitution. The relevant portion of that article reads as follows:

Except as limited by this section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including . . . the power to regulate for the protection of the public health, safety, morals and welfare. . . . (Art. 7, sec. 6(a)).

The relevant portions of the legislation establishing the University of Illinois relating to the powers of trustees (Act to provide for the organization and maintenance of the University of Illinois, § 7 (Ch. 144, par. 28, Ill. Rev. Stat. (1973)) does not mention any police power but states only that it shall provide buildings, fix tuition, appoint faculty, and other functions related to the administration of an educational institution. Therefore, the exercise of police power in this field is not one of the powers granted to the University.

Several Corporation Counsel opinions have discussed the issue of the applicability of city building codes to state agencies. In 22 Opinions of the Corporation Counsel, 378 (1943), it was stated that the City was empowered to inspect buildings owned by the state. The opinion noted that the General Assembly had invested the City with broad police power to regulate building construction and that this power had not been "withdrawn or reinvested in any other state agency." Similarly in 24 Opinions of the Corporation Counsel, 445 (1956), the issue was whether the Chicago Regional Port Authority was required to obtain building permits. The opinion stated that "no police power has been expressly or impliedly granted to the District, such as has been expressly granted to municipalities" therefore since the City of Chicago had been delegated much power, the Port Authority was held to be subject to the payment of fees for building permits and required to comply with all of the regulations of the City of Chicago.

In light of the applicable law and Corporation Counsel opinions in similar cases, it is our opinion that the University of Illinois, Chicago Circle Campus, is not entitled to any exemption from the building and electrical codes of the City of Chicago.

SCHOOL FIRE-PROOFING REQUIREMENTS

*(Commissioner, Department of Buildings—F. G. S.—
September 19, 1975)*

Reference is made to the above matter and your request for an opinion from this Department regarding the use of the premises as a Type I School.

Our files reveal that on May 18, 1948 suit was filed case No. 48 MC 163098 charging violation of Sections 57-11 and 194-A-5 of the Municipal Code, namely:

“Conducting school in 3-Story building of ordinary construction—should be semi-fire proof-school not permitted in family residence district.”

On July 16, 1948, Judge Irwin B. Clorfene entered an order in the above case as follows:

“The Court Finds the Defendant Not Guilty.”

“This cause coming on for further proceedings herein, it is considered by the Court that final judgment be entered on the finding herein, that the plaintiff take nothing by this suit, and it is ordered that said defendant be and hereby is discharged.”

This order was never appealed.

Subsequent to the entry of this Order, the Day School use continued uninterrupted until the present time and in 1961 pursuant to notice received from the Fire Prevention Bureau, steps were taken to correct certain fire-code related violations. The present corrected Notice of violation dated July 22, 1975, lists as the first violation the following:

“Discontinuance use of premises for a Type I school because the building is of ordinary construction exceeding the maximum allowable height. Section 51-1.2.”

It is our opinion that insofar as Zoning of the subject premises is concerned, the school use was adjudicated in the 1948 case and since the school use was in existence at the time of the adoption of the 1957 comprehensive Zoning Amendment, the use would be permitted to continue under the new ordinance as a non-conforming use.

Furthermore, since the 1948 case decision was not appealed and the use was permitted in the structure for a period of over 27 years in addition to which the 1961 request for compliance with fire code requirements, instead of proceeding with a suit for discontinuance of the use would appear to be acceptance of the use.

Insofar as the remaining violations are concerned in your notice of September 22, 1975, the city is entitled to have and should pursue strict compliance with the Municipal Code provisions cited therein.

It is the undersigned's understanding based on direct communication with Mr. Harry Golter, Attorney for the Day School, 800 West Buena, Chicago, Illinois, that,

- 1) the Day School has discontinued the use of the classrooms in the basement and will no longer use the basement for classrooms.

- 2) The Day School will immediately submit plans and secure a permit to do all work necessary to correct the remaining violations cited in the Notice of September 22, 1975, and effect compliance with the cited provisions of the Municipal Code of Chicago.

On the basis of the above it is our opinion that there would be no reason why the letter requested by the Day School to be sent by you to the Illinois Office of Education stating the facts relative to effecting compliance could not be sent.

SERVICING REQUESTS FOR PERMIT INFORMATION

(Commissioner of Buildings—F. G. S.—January 8, 1976)

Your letter of November 26, 1975 addressed to William R. Quinlan, Corporation Counsel, has been referred to the undersigned for attention and reply. In your letter you request an opinion as to the legality of the proposed guidelines for servicing requests by the general public for permit information contained in your files.

We have reviewed the proposed guidelines and recommend the following changes:

Upon request by an interested party, a copy of the permit should be furnished the party requesting same upon written application and payment of an appropriate fee to be determined by the Building Department to cover the search and furnishing of a copy of the permit. Likewise, upon request by the interested party, permits issued prior to 1955 should be furnished upon request and the proposed fee should cover both the search and furnishing of a copy of the permit. The application form to be used in both instances could be devised by you and available for interested parties upon request. Therefore, items two and three of your guidelines should be changed accordingly.

With the above changes incorporated into your guidelines, it is our opinion that the proposed policy for servicing requests for permit information from the general public does not contravene any legal requirements.

DEMOLITION OF FIRE-GUTTED BUILDINGS

*(J. B. N.—Back of the Yards Council—F. G. S.—
January 29, 1976)*

This is just a brief note to thank you for your assistance in connection with the above captioned matter. With the information you were able to provide, the City was able to get a Court order requiring the owner to pay the cost of demolition of this dangerous and hazardous fire gutted building. The \$2,345.00, which the owner was ordered to pay, represented a saving for the City and its taxpayers.

Rest assured that we are always deeply appreciative of the kind of constructive help you personally and the Back of the Yards Council gives us as we attempt to insure compliance with the City of Chicago's Building, Housing and Electrical Codes.

INTERPRETATION OF SULFUR CONTENT LIMITATIONS IN FUELS

(J. L. B.—H. F. W.—May 26, 1976)

We wish to acknowledge receipt of your letter of February 25, 1976, to which you attached a copy of an earlier letter requesting an interpretation of the sulfur content limitations in § 17-2.5(3) (a) of Chapter 17 of the Municipal Code of Chicago as they pertain to the storage of fuels in excess of the sulfur content limitations, where said fuels are not to be sold within the City of Chicago or an area one mile surrounding the corporate limits.

Section 17-2.5(3) (a) of Chapter 17 of the Municipal Code of Chicago, deals with and pertains to the purchase, sale, offer for sale, storage or transportation of fuels where said fuels are intended for use in the City of Chicago or within one mile of the corporate limits thereof. The ordinance does not limit or control the shipment of high sulfur content fuels nor does it ban the storage or warehousing of said fuels, while they are in the stream of intrastate or interstate commerce. The local ordinance limitations on sulfur content in fuels should not be applied to prohibit the storage or warehousing of high sulfur content fuels within the city limits. To do so, would in effect be declaring that our local ordinance is an interference with and a restraint on the free flow of goods in interstate commerce in violation of the commerce clause of the Constitution of the United States.

Under the provisions of § 17-2.5(3) (a), high sulfur content fuels may be stored within the City of Chicago providing that said fuels are not to be sold, offered for sale, or stored with the future intent to sell within the corporate limits of Chicago and a surrounding area of one mile. Since the State of Illinois regulations are more restrictive as to sulfur content, this would preclude the sale or offering for sale of such higher sulfur content fuels stored within the corporate limits of the City of Chicago, within the State of Illinois.

Of course, it follows that the facility in which the proposed high sulfur content fuel was to be stored in had been constructed in accordance with, or if new facilities are contemplated, will be constructed in accordance with the zoning and building regulations of the City of Chicago and that said facilities will comply with all of the provisions of the Municipal Code of Chicago.

PAY TOILET BAN

(B. S.—H. F. W.—June 14, 1976)

We wish to acknowledge receipt of your request to Mr. William R. Quinlan, Corporation Counsel of the City of Chicago, pertaining to the pay-toilet case. The City of Chicago had enacted a local ordinance banning pay toilets, which was subsequently challenged in court.

Greyhound Lines, Inc., The Nik-O-Lok Company, and Universal Sanitation, Inc. filed suit in the Circuit Court of Cook County against the City of Chicago challenging the constitutionality of the ordinance and the trial judge, the Honorable Samuel B. Epstein upheld the validity of the Chicago Ordinance. The plaintiffs subsequently took an appeal to the Appellate Court which affirmed the decision of Judge Epstein. See 24 Ill. App. 3d 718 (1974). Subsequently, the Supreme Court of Illinois denied plaintiffs' leave to appeal without rendering an opinion.

TRI-LEVEL ROADWAYS

(Commissioner, Department of Buildings—H. F. W.—
December 3, 1976)

We wish to acknowledge receipt of your letter of November 15, 1976 pertaining to the application for a permit filed on behalf of the Hyatt Regency Hotel. In your letter you state that a question has arisen concerning a portion of the plans relating to the floors which will be utilized for exhibition facilities and banquet rooms.

The proposed site is located in the air rights planned development area east of Michigan Avenue at Wacker Drive adjacent to the three-level roadway. Two sections of the Municipal Code are involved in this matter, namely Section 47-2 which defines grade and Section 54-4 relating to height limitations of assembly units.

Section 47-2 of Chapter 47 entitled "Definitions" defines grades as follows:

"GRADE.

1. As applied to a building less than ten feet from a street property line, grade shall be the established sidewalk elevation.
2. As applied to a building more than ten feet from a street property line, grade shall be the finished ground elevation at the building wall.
3. As applied to a building facing a two-level street, grade shall be determined by the upper level unless otherwise provided."

At the time the revised definitions were enacted in December of 1949, there was no three-level roadways in existence within the City and such three-level roadways apparently were not contemplated.

Section 54-4 of Chapter 54 entitled "Assembly Units" establishes specific height limitations for theatre and assembly occupancy in relation to height above and below grade as follows:

- "(a) The main seating level of every theatre shall be so located that normal exits from the foyer shall lead to a public street without change in level other than by means of ramps having a slope not exceeding one in ten.
- "(b) No seating level in rooms used for assembly occupancy and having a capacity of more than 300 persons shall be at the level more than twenty feet above grade except in buildings of Types I-A or I-B construction.
- "(c) No assembly occupancy shall be located at a level more than twenty feet below grade in buildings of Types I-A or I-B construction, nor more than ten feet below grade in buildings or other types of construction."

The apparent main purpose sought to be accomplished by the specific height limitations of Chapter 54 is to assure the safety of persons gathered for theatre and assembly occupancy as it pertains to evacuating said facilities in the event of fire or other dangerous occurrences. The limitations pertaining to not permitting seating for theatre or assembly occupancy more than 20 feet above grade nor more than 20 feet below grade were enacted to assure speedy and easy access to a public street for evacuation purposes.

The subject site has been improved with three-levels of roadway in accordance with the planned development ordinance previously adopted by the City. Under said three-level roadway development, each level of roadway is a fully improved public street.

The situation presented in your letter dealing with a three-level roadway was not envisioned or contemplated at the time the respective sections of the Municipal Code were enacted. Section 47-2.3 indicates that there might be a situation which could permit the establishment of a grade other than the upper level or the establishment of more than 1 grade where there is a three or more level street by the use of the phrase "unless otherwise provided" in said section. The sections of the ordinance you refer to are silent on establishing grade and setting specific height limitations in planned development areas which are improved with three or more levels of roadway in accordance with planned development ordinances. Since the underlying rationale for the code is to secure the safety of persons occupying theatre, exhibition, banquet and assembly rooms in the event of emergency and since each of the three-levels of roadway are a fully improved public street, evacuation from these rooms into any one of the three levels of roadway would assure that the occupants of said facilities would have the same opportunity to evacuate those floors or levels as if the facility were located at street level.

Section 47-2.3 states that any two-level street grade shall be determined by the upper level unless otherwise provided. This clearly establishes the fact that the City Council in enacting said section contemplated that any two-level street grade could be determined at the lower level or at both levels because to read said section in any other way would make the inclusion of the words "unless otherwise provided" meaningless. It is our opinion that neither the language in Chapter 47, definitions, nor the provisions in Section 54-4 of Chapter 54 require that the upper level of a three-level roadway must be considered grade. Since the three-level roadway was approved by a planned development ordinance, passed subsequent to Section 47-2.3, and since theatre and assembly occupancy of floors of a building located adjacent to said three-level roadway would empty at each level, into a public street, in a situation where there are three or more levels of roadway, it would be within the discretion of your department to establish more than one grade level at a three-level roadway so that theater and assembly occupancy uses could be established at each of the three levels of roadway.

We sincerely trust that this will enable you to review and process the application which has been filed with your department.

EMERGENCY REHABILITATION AND REPAIR— COMMUNITY DEVELOPMENT FUNDS

*(Commissioner, Department of Development and Planning
—E. L. N.—September 29, 1977)*

Reference is made to your letter of September 9, 1977 wherein you requested an opinion from the Corporation Counsel with respect to the authority of the City to purchase Receiver Certificates for emergency repairs of occupied structures. The facts are:

- (1) The City of Chicago instituted Building Code Violation suits wherein Receivers were appointed by Court order.
- (2) The Receiver is an officer of the Kenwood-Oakland Community Or-

ganization, a not-for-profit corporation, who has the responsibility of maintaining the property and collecting rentals until the property is restored to a safe and sanitary condition.

(3) The subject properties require emergency rehabilitation and repairs in order to maintain the properties in a livable condition particularly during the winter period when heating is necessary.

(4) The Receiver proposes to issue certificates for the cost of the emergency rehabilitation and repairs.

(5) The properties in question are under Court jurisdiction; although fee title ownership remains in private individuals.

(6) The City proposes to purchase the said certificates from Community Development Funds.

The foregoing presents two fundamental issues:

a. whether the City of Chicago has the power to expend funds under the emergency circumstances hereinabove set forth; and

b. whether Community Development Funds can be utilized for such emergency rehabilitation and repair work.

Ill. Rev. Stats. Ch. 24 § 11:31:2 provides that a municipality can institute proceedings to require buildings to conform with minimum standards of health, safety and welfare. It further provides that a Receiver may be appointed and is authorized to issue notes or certificates to secure funds expended.

The Constitution of the State of Illinois of 1970 provides, pursuant to Article VII § 6(a) that home rule powers are granted to municipalities which have a population in excess of 25,000. Pursuant to the home rule power as specifically delegated by the Constitution of the State of Illinois of 1970, the City of Chicago has the power to regulate for the protection of public health, safety, morals and welfare. In addition, Article VIII § 1(a) provides that public funds, property or credits can be used for public purposes.

The case law has uniformly supported the acquisition of property which is dilapidated or deteriorated as a public purpose regardless of the subsequent resale of the said property to a private redeveloper (*Chicago Land Clearance Commission v. White*, 1 Ill. 2d, 69).

The Department of Urban Renewal of the City of Chicago is an integral part in the implementation of the Community Development Act's objectives. Urban Renewal activities were programmed in the refund provisions of the Community Development Act. The Urban Renewal Consolidation Act of 1961 provides in § 24 (Ill. Rev. Stats. Ch. 67 ½ § 91.124(a)):

" . . . and to hold, improve, mortgage, manage, sell, lease or exchange same in accordance with the provisions of this Act. . . ."

The Urban Renewal Act in § 91.123 specifically grants to a municipality the right to require through Court proceedings an owner of property to make minimum repairs and has the further authority to file a lien for all costs advanced by the municipality in causing said repairs to be made.

Therefore, the proposed expenditure of funds relative to emergency repairs with respect to buildings under the Court's jurisdiction by virtue of an action brought by the City of Chicago is for a legitimate public purpose. The City of Chicago has the power and authority to expend such funds.

With respect to the question as to whether Community Development Funds can properly be allocated for such purposes, reference is made to § 570.200(a) (4) of the Federal Regulations relating to the Community Development Act, which provides as follows:

"Clearance, demolition, removal, and rehabilitation of buildings and improvements, including (i) *interim assistance to alleviate harmful conditions in which immediate public action is needed*; (ii) rehabilitation of acquired properties for use or resale in the provision of housing; (iii) demolition and modernization (but not new construction) of publicly owned low-income housing; and (iv) financing rehabilitation of privately owned properties through the direct use of funds in the provision of grants, loans, loan guarantees, and interest supplements when provided in connection with other physical development activities described in the community development program which are eligible for assistance under this Part. Loans for the rehabilitation of residential property may include an amount to refinance existing indebtedness secured by such property if such refinancing is necessary to enable the loan recipient to amortize, with a monthly payment of not more than 20 per centum of the average monthly income of the loan recipient, such loan and any other indebtedness secured by the property of the loan recipient."

The foregoing clearly indicates that funds can be allocated from the Community Development Act in order to alleviate harmful emergency conditions in structures which are privately owned.

In conclusion the expenditure of Community Development Fund money for the purposes as set forth herein is an appropriate and lawful expenditure.

NOTICE OF CONSTRUCTION TO ADJACENT OWNER

*(Commissioner, Department of Planning, City and
Community Development—H. F. W.—May 5, 1978)*

We wish to acknowledge receipt of your recent letter pertaining to the Plan Commission approval of the construction of a 46 dwelling unit apartment building at 4920 N. Marine Drive in accordance with the Lake Michigan and Chicago Lakefront Protection Ordinance. You attached a copy of a letter from Mr. Robert E. Cherry dated February 7, 1978 to your letter, which we herewith return to you. We have also received a letter from Mr. Raymond F. Simon the attorney for the applicant.

The question raised in this correspondence pertains to whether or not there was a defect in the notices sent out for the Plan Commission hearing in question. It appears that Mr. Simon filed an application for approval of the construction of a 48 dwelling unit apartment building at 4280 N. Marine Drive pursuant to the provisions of the Lake Michigan and Chicago Lakefront Protection Ordinance. In September of 1977, Mr. Simon, as attorney for the applicant, ordered a search of records in accordance with the provisions of the Chicago Zoning Ordinance from the Chicago Title and Trust Co. Pursuant to that request Mr. Simon was furnished a list of the persons requiring service in accordance with the ordinance and notices were sent to those persons. On the list furnished to Mr. Simon, the Uptown Service Corporation, the original developer of the building located at 4300 N. Marine Drive was listed as the sole person entitled to notice.

At the time of the Plan Commission hearing, the Uptown Service Corporation had converted the building at 4300 N. Marine Drive to a condominium project and all 90 apartments had been sold. Mr. Cherry's position is that the proper persons to be notified of the Plan Commission hearing were the owners of the respective apartments in the building and since they did not receive notice this constitutes a defect or lack of proper or adequate notice and warrants a rehearing of the subject matter.

The provisions pertaining to notice and specifying the method for determining what persons are entitled to notice is spelled out in detail in Article 194B-6.1 (c) of the Lake Michigan and Chicago Lakefront Ordinance. The pertinent part of that section reads as follows:

“ . . . each applicant . . . shall . . . serve written notice . . . by certified or registered mail . . . on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of Cook County. . . . ”

Since the list of persons to whom Mr. Simon mailed notice were those who appeared on the authentic tax records, the proper persons entitled to notice actually did receive notice.

An applicant for approval of a construction project under the provisions of the Lake Michigan and Chicago Lakefront Protection Ordinance, Chapter 194B of the Municipal Code of Chicago is entitled to rely on the provisions as to what persons are entitled to notice and if the applicant has followed the procedures spelled out in the ordinance we must conclude that the provisions pertaining to notice were complied with. Parcels of land and condominium apartments are being sold all the time. A developer and applicant cannot be charged with the responsibility to try to determine recent sales and serve notice on the new purchasers in addition to the legal notice requirements of the ordinance. Rather, it is incumbent upon the new purchasers in the area to have their real estate transactions reflected on the County Recorder's Records and the tax records as soon as possible so that their names will appear as legal title holders of the real estate and their names will appear as owners on the authentic tax records.

It is the opinion of the writer that proper and adequate notice of the Plan Commission hearing was given by the applicant's attorney in this matter. It appears that Mr. Cherry's complaint on behalf of the other condominium owners of the apartment building at 4300 N. Marine Drive is really a complaint of the breakdown in communication between the seller of the condominium units, namely Uptown Service Corporation and the individual condominium apartment purchasers. Section 194B-6.1 (c) clearly spells out the persons to be notified to be those who appear on the authentic tax records. It would be unfair and illegal to impose a requirement upon this applicant to notify additional parties other than those entitled to notice under the provisions of the ordinance.

It is the opinion of the writer that the applicant in the Plan Commission hearing of October 1, 1977 did comply with the notice requirements of Section 194B-6.1 (c). Of course it is within your discretion to review the list of persons who received notice to determine that all owners of property within 250 feet whose names appear on the authentic tax records did in fact receive notice. If you determine that all persons entitled to notice under Section 6.1 (c) did in fact receive notice then it is within your discretion to reaffirm the decision of October 1, 1977 in which the Plan Commission approved the applicant's construction project.

PROPERTY REPORT REQUIREMENT EXEMPTION

(*H. A. K., Attorney,—R. F. F.—November 3, 1978*)

This is in answer to your recent inquiry relating to the application of the condominium ordinance (Municipal Code of Chicago, Chapter 100.2).

You state that your client is acquiring 44 of the 76 units in a building under construction which will be submitted to the Illinois Condominium Property Act. However, the original owner began a sales program in 1977 and there are presently contracts to convey 16 units to purchasers. The original developer is completing construction of the building and will thereafter submit the property to the Condominium Act. Your client is acquiring from the developer units unsold at that time. You ask whether it is necessary for your client to prepare the property report required pursuant to Section 100.2-6 of the city condominium ordinance.

Your client, although not the original owner of the property, must be considered a developer as defined in Section 100.2-1 of the ordinance because he will be offering units "owned by him for sale in the ordinary course of his business." Nevertheless, the original developer was exempt from the property report provision under Section 2 of the Chicago condominium ordinance, which waived the requirement for "units . . . offered for sale to the general public prior to the effective date," January 1, 1978.

Your client succeeds to the interest of the original developer. Had the original developer continued to market all the units, no property report would have been required. Under the unique circumstances presented here, your client need not furnish a property report.

CAPITAL DEVELOPMENT BOARD PERMIT FEE EXEMPTION

(*Commissioner, Department of Buildings—H. F. W.—
June 25, 1979*)

We wish to acknowledge receipt of your recent correspondence in which you request an opinion as to whether or not construction projects of the Capital Development Board are exempt from the permit fee schedules associated with the issuance of building permits.

We have also reviewed the court files in *City of Chicago v. Board of Governors of State Colleges and Universities*, 75 CH 53338 and *Capital Development Board v. City of Chicago*, 75 CH 7419, which cases deal with the issues of whether or not construction projects of the Capital Development Board must conform with and meet the requirements of the City of Chicago construction codes and with the issue of sovereign immunity.

In *City of Chicago v. Board of Governors of State Colleges and Universities and the Capital Development Board*, 75 CH 53338, the City alleges that the construction of the Northeastern Illinois University was subject to the City's Building Code and asked the Court to enjoin construction until the Capital Development Board and its general and sub-contractors obtained building permits from the City's Building Department. The issue in this case was sovereign

immunity. Both the Corporation Counsel's Office and the Illinois Attorney General's Office filed extensive briefs on the issue of sovereign immunity.

The City of Chicago's prime concern was for the safety of schoolchildren and to ensure this objective, the City was requesting that all state construction within the City be designed and constructed in accordance with the City's construction standards as set out in the City's Ordinances. The Capital Development Board's prime concern was to ensure construction of safe state facilities without abandoning the sovereign immunity of a state agency.

To resolve this issue an intergovernmental agreement was reached whereby the Capital Development Board would design all state construction within the City and apply for building permits for all such construction. The City of Chicago would exempt the Capital Development Board, its general contractors, and its sub-contractors from being subject to the permit fees set out in our local ordinances.

Therefore, permits to the Capital Development Board and its contractors may be issued without requiring the Capital Development Board and its contractors to submit permit fees to your office.

PUBLIC ACCESS TO BUILDING INSPECTION REPORTS

*(Commissioner, Department of Buildings—D. P.—
July 23, 1979)*

On June 13, 1979 the Illinois Supreme Court issued its mandate in the case referred to above. Enclosed herewith are copies of the opinion filed by the court on January 29, 1979 and a supplemental opinion which was filed May 30, 1979.

The *Lopez* case concerns public access to building inspection records in your department. The Circuit Court of Cook County had originally ruled that the records were public in the sense that they were open to inspection by any member of the public. The Appellate Court of Illinois reversed that decision and, as the opinion enclosed indicates, was affirmed by the Illinois Supreme Court.

Essentially, the court ruled that inspection records are not available for public inspection until the building owner has had an opportunity to contest the conclusion of the inspector. A compliance hearing or court proceeding concerning the violation would afford the building owner that opportunity. After the owner has had an opportunity to be heard, the building inspection reports are then open to public inspection.

In its supplemental opinion the court modified its previous disposition as to two of the plaintiffs but did not alter its holding. Since the report requested by Central Lakeview Neighbors concerned a building which had been the subject of court proceedings, the court held that this plaintiff was entitled to access to the inspector's report. In order to determine whether the report sought by plaintiff Lloyd Packer was available to the public, the court ordered that a hearing be held to determine if the owner of the property had received notice of the violation and an opportunity to contest the inspector's conclusions.

After reading the opinions you may find it helpful for this office to assist you in reviewing your present procedures to determine whether they comply with the law. We will be happy to do so.

PROPERTY REPORT REQUIREMENT— COOPERATIVE CONVERTED TO CONDOMINIUM

(R. L. S., Attorney—R. F. F.—August 28, 1979)

This is in answer to your letter of August 27, 1979, in which you inquire whether a condominium property report is necessary for the conversion to condominium ownership of a building whose owners you represent.

You state that your clients are residents of a 13-unit apartment building. The residents all own undivided fractional beneficial interests in the land trust which is the title holder of the building. You state that the residents wish to convert the ownership of this building to the condominium form. After conversion, you state, the residents will continue to reside in their apartments and will retain ownership of their respective units. You inquire whether it is necessary for the owners to prepare a condominium property report.

Chapter 100.2, § 100.2-5 of the Municipal Code of Chicago requires a developer of a condominium to prepare a property report and furnish it to prospective purchasers. The purpose of the property report is to provide detailed information concerning the financial and physical condition of the condominium to persons to whom the information would not otherwise be available. However, in those unusual situations in which such information is readily available, the property report is unnecessary. For example, Chapter 100.2 provides that where apartment buildings are converted from the cooperative form of ownership to the condominium form, the property report need not be furnished.

There is no express exemption from the property report requirement for the situation you describe. However, the situation is almost identical to that of a cooperative converting to condominium ownership. From the description you have supplied, it would appear that the preparation of a property report would similarly be unnecessary. The beneficial owner-residents are already occupying units and have been responsible for the financial and physical upkeep of the building during the period of their residence. As owners, financial and physical information is naturally readily available to them. In addition, the consumer protection function of the property report does not apply in the situation you describe, because following conversion units will not be immediately conveyed to persons other than the current residents.

Accordingly, under these circumstances, the property report provision of Chapter 100.2 of the Municipal Code of Chicago does not apply.

Section B. ZONING

PROPOSED USE OF LAND ACQUIRED FROM PLANNED DEVELOPMENT

*(L. W. H., Department of Development and Planning—
H. F. W.—June 11, 1974)*

We wish to thank you for your letter of May 23, 1974 and the site plan which you forwarded to our office. We have reviewed your letters of April 5th, April 17th, April 24th and May 15th along with the supporting documents submitted to our office. We have also reviewed the opinion of the Corporation

Counsel dated June 21, 1972, which pertains to the acquisition of a part of a planned development for park purposes.

In your letter you request an opinion as to whether land which had been originally designated as part of a planned development could be deleted from said planned development and used as a total lot area for a new planned development. In your letter you specifically request an opinion as to whether a portion of the land designated as part of Planned Development No. 11 may now be withdrawn from said planned development and designated as a new planned development for the proposed Arie Crown Hebrew School. In our letter of June 21, 1972, we stated that open space in a residential planned development or any other portion of said development may be sold by the recipient of the development designation without the necessity of said land being deleted from the planned development. We further stated that the purchaser acquires the property subject to the terms and conditions of the residential planned development as it pertains to the uses that may be made of such open space. This appears to be the case at point. The Arie Crown Hebrew Day School has acquired land which was formerly part of the open space of Planned Development No. 11 and as such the school as a successor in title may use such land as open space.

The question as to whether such vacant land acquired by a successor in title may be used for construction was reviewed in our opinion of June 21, 1972, in which we stated that it was not necessary for the Department of Development and Planning to process an amendment to Planned Development No. 11 in order for said land to be used by the Chicago Park District as an addition to an existing park, providing that such open space acquired for park purposes would not be used for construction thereon.

It appears that the Arie Crown Hebrew Day School does not own any other property other than the 5.95 acres of land being withdrawn from Planned Development No. 11. It also appears that the proposed school project calls for construction of buildings on approximately 30 percent of this total lot area. The proposed project in effect, amounts to a request to build additional structures on part of the open space of an existing planned development, which has been developed to its maximum. The proposed project is really an amendment to Planned Development No. 11, rather than a withdrawal of a portion of the land from the planned development to be used in conjunction with other land in a building program.

The original Planned Development No. 11 had a total site area of 1,749,442 sq. ft., and the maximum permitted floor area ratio for that development was set at 0.80. Under the proposed project, approximately 260,000 sq. ft. of the Planned Development No. 11 would be withdrawn from said development and would result in an adjustment of the maximum permitted floor area ratio from 0.80 to 0.93. In addition, 30 percent of the land withdrawn from Planned Development No. 11 would be improved with buildings for the school project.

The real question before you is the precedents which this application may establish. Here we have a planned development which has been 100% developed pursuant to the authorized maximum floor area ratio permitted of 0.80. The new application for an Institutional Planned Development calls for the removal of approximately 1/6 of the total lot area of the original planned development and proposed to make the separate new planned development out of this area. The rules and regulations promulgated by the Department of Development and Planning for Residential Planned Developments provides a procedure for removing a substantial portion of the lot area or changing the lot area

of a planned development. The proposed Institutional Planned Development does not conform to these procedures and the granting of this application could be setting a precedent by which developers could complete construction of a planned development and then later withdraw a portion of the required open space from the original planned development and use such land area for additional construction.

It is the opinion of this office that the proposed Institutional Planned Development should not be approved in its present form. This application, in reality, is an application to amend Planned Development No. 11 and to remove 250,000 sq. ft. of vacant land from said planned development and permit said land to be developed for the proposed Institutional Planned Development.

PERMIT FOR GREENHOUSE CONSTRUCTION

*(Commissioner, Department of Buildings—
B. J. O.—June 27, 1974)*

Reference is made to your letter of May 6th, 1974 with which you transmitted a copy of an order entered by Judge J. Crowley in the above captioned case and requesting that you be advised as to what action you should take in the matter.

On December 12th, 1973, in Room 1101 Chicago Civic Center Judge J. J. Crowley signed an order which is attached hereto and in essence stated:

- 1) The Building Department is to issue a permit for the erection of a greenhouse and balcony as per plans for the building located at 545 W. Dickens. In addition this court decided that the Zoning Ordinance did not apply.

On March 13th, 1974 a full and complete hearing was held concerning a Petition by Corporation Counsel to vacate the December 12th, 1973 order. Legal arguments of Counsel and witnesses were heard and the Court in its wisdom decided as follows:

- 1) Petition to vacate the order of Court denied.
- 2) Immediate compliance of December 12th, 1973 order of Court by the City of Chicago through the Department of Buildings.
- 3) That the order of December 12th, 1973 be amended to refer to the "glass enclosed structure for raising household plants" in place of the word "greenhouse."

Therefore it is the opinion of this office that the City of Chicago through the Department of Buildings issue a permit for the construction of a "glass enclosed structure for raising household plants." To do otherwise would be in contempt of the order of court.

FLOOR AREA RATIO REQUIREMENT— GUIDELINES

*(Commissioner Department of Buildings—R. L. C.—
August 7, 1974)*

You have asked for guidelines in interpreting floor area ratio provisions of the Chicago Zoning Ordinance, the Planned Development Ordinance Amend-

ments and the Lake Front Protection Ordinance, as they apply to a proposed development on certain property, and you enclose a copy of a letter from the developer addressed to you, setting forth the details of the questions to be answered. The developer plans to erect a high-rise building that will be built partially on air rights within the planned development covering the Illinois Central Randolph Street Terminal property; partially above Beaubien Court which was recently vacated (J. Couns. Proceed. July 5, 1972, p. 3406); and partially on property which fronts on Michigan Avenue, all of said property lying between East Lake and East South Water Streets.

The application of appropriate floor area ratio provisions to this situation requires an examination, first, of the terms of the planned development ordinance adopted September 17, 1969, together with the zoning map which applies to the balance of the property. Section 1 of the ordinance establishing the Residential-Business Planned Development No. 70, adopted on September 17, 1969 (J. Couns. Proceed. Sept. 17, 1969, p. 6120) sets forth the boundaries of said planned development. The western boundary in particular, with which we are concerned, reads, in part, as follows:

“ . . . the north line of E. Randolph Street; *the east line of N. Beaubien Court*; the north line of E. South Water Street; . . . ” (Emphasis Supplied.)

It is clear from the foregoing that in the area of Beaubien Court, between East Lake and East South Water Streets, the west boundary of the planned development coincides with the east line of Beaubien Court, recently vacated.

Further, as shown by Map I-E (Chicago Zoning Ordinance pamphlet, p. 96B, as amended to and including January 1, 1973) the zoning of property between East Lake and East South Water Streets west of the west line of vacated Beaubien Court is B6-7 Restricted Central Business District.

In view of the fact that the planned development boundary between East Lake Street and East South Water Street is specifically delineated in the planned development ordinance to coincide with the east line of vacated Beaubien Court, and since the east line of vacated Beaubien Court also coincides with the west property line of the Randolph Street Terminal property at that location, the vacation of Beaubien Court, all of which is located within the B6-7 Restricted Central Business District, results in said vacated street remaining within the B6-7 zoning, as provided under Section 12.2(4) of the Zoning Ordinance.

According to the letters, the developer plans to erect a single high-rise office building that will be built partially within the B6-7 Restricted Central Business District and partially on air rights within the planned development area; therefore, two floor area ratio regulations would apply, as shown from the preceding discussion, and we turn now to a resolution of that situation.

Nothing in the Chicago Zoning Ordinance prohibits the construction of a single building on an appropriately designated zoning lot, within two separate zoning districts with two separate and distinct floor area ratio formulae, and nothing requires such a building to conform uniformly to but one such formula. The floor area ratio requirements of the ordinance in a B6-7 Restricted Central Business District is limited to 16.0 except where the front or side lot line or the zoning lot adjoins a public open space of certain dimensions and except for setback provisions, in which cases floor area ratio premiums could be added (Zoning Ordinance, Secs. 8.5-6(2), (3), (5)). The maximum allowable floor area ratio for the net developable area is 14.0 within Residential-Business Planned Development No. 70, under paragraph 5 of the “Planned Development Use

and Bulk Regulations and Data," as set forth in the planned development ordinance.

In view of the foregoing circumstances, it is our opinion that the proposed office building may be constructed with that portion located within the B6-7 District subject to the 16.0 floor area ratio limitations as hereinabove described and that portion within the planned development area subject to the 14.0 floor area ratio limitation.

With respect to the applicability of the recently adopted Planned Development Ordinance Amendments to the subject property, one portion of the property is already subject to the existing Planned Development Ordinance No. 70, adopted on September 17, 1969 (J. Couns. Proceed. Sept. 17, 1969, p. 6120) which contemplates a property use such as that proposed. As to that portion of the property contained within the B6-7 District, the amendments apply only if the proposed structure within that district is amenable to the criteria set forth in Section 11.11-1(j) thereof (J. Couns. Proceed. March 22, 1974, p. 7980).

As to the Lake Front Protection Ordinance, in its application to the proposed development, it is our opinion that the provisions of that ordinance do not affect the subject property for two reasons: first, as to the planned development portion of the subject property, since the ordinance authorizing the planned development was adopted on September 17, 1969 (J. Couns. Proceed. Sept. 17, 1969, p. 6120), it is specifically exempted by Section 194B-5.1 of the Lake Front Protection Ordinance (J. Couns. Proceed. Oct. 24, 1973, Special Pamphlet, p. 3); and second, as to the property lying west of the planned development boundary, Map No. 1-E of the Lake Front Protection Ordinance (Ibid., p. 19) reveals that said property lies outside of any portion of any district therein set forth.

OWNERSHIP REQUIREMENT FOR DEVELOPMENT APPLICATION

*(Commissioner, Department of Development and Planning
H. F. W.—September 12, 1974)*

We wish to acknowledge receipt of your letter of September 5, 1974, in which you request a review of the above application to determine its compliance with Section 4.2(b) and Section 6.1(c) of Chapter 194B of the Municipal Code of Chicago. You attached the application and supporting documents to your letter, which we herewith return to you.

Section 194B-4.2(b) reads as follows:

"An applicant is the owner of the subject property or a duly authorized representative."

For a person to qualify as an applicant, such person must have a real interest in the subject property. A review of the two affidavits to your letter executed by Mr. Daniel Comm and Mr. Marvin Rosenberg, it appears that Marvin Rosenberg is the owner of the subject property and that Daniel Comm's interest is that of a developer and a possible option contract purchaser of the subject property. It is clear that a prospective purchaser of a parcel of property who has entered into an option contract or a conditional purchase agreement does not have a sufficient interest in the real estate to be classified as an owner of the property. To permit developers who have negotiated option

contracts to purchase property to proceed with filing of applications with the Chicago Plan Commission in the hopes of obtaining approval of their proposed development prior to purchasing the real estate, and having the option to repudiate the agreement to purchase if they are unsuccessful in their proposed development, would be to circumvent the requirements that an applicant for a proposed development subject to the Lake Michigan and Chicago Lakefront Protection Ordinance be an owner of the subject property involved.

It is recommended that your Department request a copy of the real estate contract entered into between Daniel Comm and Marvin Rosenberg to determine if said Daniel Comm has any real interest in the subject property so as to qualify as an *applicant owner* of the subject property.

Under Section 194B-6.1(c), each applicant must serve the notice specified in that section. It therefor follows that if Daniel Comm does not qualify as an applicant as defined in Section 194B-4.2(b), then the affidavit of notice having been mailed to the parties listed as entitled to notice is defective in that Section 6.1(c) requires the applicant owner to send the notice and sending of notice by a contract purchase would not comply with the requirements of notice by an applicant.

It is the opinion of our office that additional information is required in order to determine whether Daniel Comm has a real interest in the property and whether said Daniel Comm qualifies as an applicant owner under the Ordinance.

EFFECT OF PRIOR COURT ORDER ON SUBSEQUENT PERMIT APPLICATION

(Commissioner, Department of Buildings—
H. F. W.—January 14, 1975)

We wish to acknowledge receipt of your letter of November 13, 1974, in which you request an opinion as to the validity of the Court Order of June 20, 1956. Also attached to your letter was a copy of letter from Mr. Michael L. Igoe, Jr. of the Law Firm of Gann, McIntosh, Flaherty and Parker, a copy of the Court Order in case No. 56-C-5650, a copy of the Master's Report, and various pages of the Trial Transcript. We have also consulted with Mr. Harry Manley, the Zoning Administrator.

The Court Order entered in case No. 56-C-5650, was entered prior to the adoption of the comprehensive 1957 Zoning Ordinance Amendment, and therefor was a decision in Declaratory Judgment matter dealing with the Ordinance in effect prior to that time. The Borg-Warner Building was constructed pursuant to the Court Order which provided that the plaintiffs had a clear legal right to construct a building containing 21 stories in height plus a penthouse. The Order also restricted the total floor area to 393,000 sq. ft. or less. From the facts stated in Mr. Igoe's letter, the building is a 21 story building with a penthouse and has a total floor area of 384,000 sq. ft. The proposed addition consists of approximately 946 sq. ft. so that the total floor area of the building after the plaintiffs proposed addition would still be below the 393,000 sq. ft. maximum floor area permitted by the Court Order. This addition would have been permitted under the Court Order.

The question you are asking is really a factual one rather than a legal question. If you determine that the Borg-Warner Building is a 21 story building with a penthouse, and if you determine that the building after the addition will

meet the 393,000 sq. ft. floor area limitation then it is within your discretion to process the plaintiffs application. If you determine that the proposed addition will result in the classification of the building as a 22 story building in addition to a penthouse, then it is within your discretion to reject the plaintiffs application.

We sincerely trust that this will enable you to act upon the plaintiffs request for a building permit.

PERMIT FOR REMODELING NON-CONFORMING STRUCTURE

(*Commissioner, Department of Buildings—
H. F. W.—May 6, 1975*)

We wish to acknowledge receipt of Mr. Harry L. Manley's letter of February 26, 1975, in which letter he requested a clarification of the opinion expressed in our letter of January 14, 1975. We have also reviewed Mr. Igoe's letter of November 8, 1974, Mr. Manley's Memorandum of January 11, 1974, the Order and Master's Report entered in *Collins, Tuttle and Company v. City of Chicago*, Case No. 56-C-5650, and the transcripts of the hearings before the Master.

In your letter you request an opinion as to whether the Court Order exempts the penthouses from the bulk limitations imposed by said Order, and whether the first level penthouse constitutes a 22nd floor under Section 3.2 of Chapter 194A and Section 62.11-2(b). In reviewing the transcript of the hearing before the Master in Chancery, Philip H. Mitchel, dated 5/21/56, it appears that four exhibits were introduced at that time, namely, a rendering (Exhibit 1), a letter (Exhibit 2), a brochure (Exhibit 3), and a certified copy of an agreement (Exhibit 4). At this May 21, 1956, hearing, Mr. Schuman an architect testified on behalf of the plaintiffs, and described the type of building that he had been authorized to design for the plaintiffs. The hearing of May 21st was recessed until May 25, 1956, so as to enable the architect to prepare a preliminary drawing of the proposed construction which was introduced into the record as plaintiffs' Exhibit 5.

It is important to note that the Borg-Warner Building is a non-conforming structure under the provisions of the Comprehensive Zoning Ordinance Amendment of 1957, Chapter 194A of the Municipal Code of Chicago. The construction of this building was authorized pursuant to the Order of Judge Harry M. Fisher in case No. 56-C-5650, which was entered on June 20, 1956. The building permits authorizing this structure were also issued prior to the adoption of the 1957 Comprehensive Zoning Ordinance. Judge Fisher's Order authorized the construction of a 21 story building plus penthouses in accordance with the proof presented before the Master and the Court with the limiting factor that the floor area of the completed building should not exceed 393,000 sq. ft. Since the building was constructed pursuant to a permit issued in accordance with drawings approved by the Court, the provisions of the 1957 Comprehensive Zoning Ordinance Amendment and the provisions of Section 62-11.2(b) of the Municipal Code should not be applied as limiting factors to this non-conforming structure.

It therefore follows that it is within the discretion of the Commissioner of the Department of Buildings to process and issue a building permit for the remodeling of the penthouses of this non-conforming structure. It would therefore also follow that an addition of 900 sq. ft. would not be prohibited by the

Court Order providing that the total floor area including the addition, would not exceed 393,000 sq. ft.

We sincerely trust this will enable your Department to process the applicant's request for a building permit.

ZONING—"MASSAGE ESTABLISHMENT" ORDINANCE PROPOSAL:

*(Commissioner, Department of Development and Planning
—H. F. W.—December 9, 1975)*

We wish to acknowledge receipt of your letter of July 8, 1975, and the copy of the Proposed Ordinance Amendment to the Chicago Zoning Ordinance introduced in the City Council by Alderman Oberman. In your letter you request us to review the definition of Massage Establishment as stated in the proposed amendment.

After reviewing the terminology and the proposed ordinance amendment, and reviewing said terminology in relation to Article 2, "Intent and Purposes" for the adoption of the Chicago Zoning Ordinance, and in relation to the duties imposed upon the Zoning Administrator pursuant to the provisions of Section 11.2-2 of the Zoning Ordinance, it appears that this definition by itself is overly broad, vague and ambiguous and would not be subject to enforcement under the terms of the Chicago Zoning Ordinance.

Under Article 3, "Rules and Definitions" of the Chicago Zoning Ordinance, most of the definitions listed therein deal with the specific parcel of land or the type of structure or building located on the land. While it may be true that certain facilities such as Day Care Centers, Housing For Elderly Persons and Rest Homes or Nursing Homes are defined in this section, said definitions attempt to classify said use in relation to the type of building in which it is located. These facilities do not describe the activities within the facility or detail the conduct of operations of the occupants of a specific building. Additions to the definition section of the Zoning Ordinance should be reviewed in the light of their function and purpose as to zoning. Detailing of permitted uses and special uses under specific business and commercial zoning classifications should be reviewed in the light of the enforceability of the zoning ordinance by the Zoning Administrator. In Section 11.2-2 entitled "Duties of the Zoning Administrator" there is a provision which requires the Zoning Administrator to conduct inspection of buildings, structures and uses of land to determine compliance with the terms of this comprehensive amendment. The use known as "Massage Establishment" as defined in the proposed ordinance amendment is so overly broad, vague and undefinable as a zoning classification so as to be incapable of enforcement by the Zoning Administrator in that the use is defined in terms of the acts of the tenant and his employees, *and not* in relation to any alterations, modifications or remodelings of a structure for the purpose of that use such as is true in the case of physical culture, gymnasiums, reducing salons, and public baths.

While it is true that under the provisions of Section 8.3-2(44) Physical Culture and Health Services, Gymnasiums, Reducing Salons, Masseurs and Public Baths are listed as permitted uses, each of these uses can be identified by a zoning inspector in terms and relations of the facilities installed into a structure or the remodeling of the interior of a building such as bath facilities, installation of machinery or equipment. Massage Establishments under the defini-

tion proposed do not in any way deal with land, a building, a structure or the use of the structure, but deals with the conduct of an individual while in a building.

Chapter 152 of the Municipal Code of Chicago not only defines a "Massage Establishment" but also sets up the license requirements and the operating procedures for said activity. A reading of Chapter 152 clearly shows that the business of a "Massage Establishment" is in reality the operating conduct of individuals within an enclosed room and is in no way related to the land on which the building is located or the type of building or structure within which it is located. It therefore follows that in the interest of maintaining uniformity and the inability to classify Massage Establishments in the light of zoning laws and the enforcement of said laws it appears that the use, "Massage Establishment" is too vague and ambiguous to be subject to effective enforcement by the Zoning Administrator as a provision of the Chicago Zoning Ordinance.

The question as to whether special zoning classifications or regulations may be used to *limit the location* of certain types of facilities such as massage parlors, adult bookstores, movie houses and topless go-go bars is presently pending before the Supreme Court of the United States. The local ordinance involved in that litigation is a Detroit Ordinance which barred the location of certain of these facilities in an area within 1,000 feet of each other. It may be wise to defer any zoning ordinance amendments affecting massage parlors until such time as the United States Supreme Court has reviewed the zoning rules as they pertain to curbing adult businesses.

SPECIAL USE CERTIFICATION BY COURT ORDER

(Zoning Administrator—H. F. W.—January 28, 1976)

We wish to acknowledge receipt of your letter of January 9, 1976 pertaining to the proposed development of a 226 bed nursing home at the above address. You attached a copy of a letter from Mr. Charles J. O'Connor and a copy of an Order entered by Judge Edward F. Healy to your letter.

We have also reviewed Mr. O'Connor's letter to Mr. William R. Quinlan and Mr. O'Connor's letter to Dr. Murray C. Brown. As stated in the letter to Dr. Brown, the applicants, the Osinas, in their application to the Illinois Department of Public Health for approval of a 225 bed skilled care nursing home are required to submit the consent of the local zoning authority with their application.

While it is true that at the present time an applicant seeking to construct a 226 bed nursing home at the above site would have to obtain the designation of a Planned Development, this factual situation does not apply to the Osina case. The Osinas originally applied for a variation in the Nature of a Special Use with the Zoning Board of Appeals in January of 1972. The Zoning Board denied the special use and the Osinas by way of Administrative Review, sought court relief. On July 15, 1973, Judge Edward F. Healy of the Circuit Court of Cook County reversed the decision of the Zoning Board of Appeals and directed the City of Chicago to process the application for the construction of the 5 story nursing home at 7350-72 N. Sheridan Road. The City appealed the Court's ruling and on May 14, 1975 the Appellate Court affirmed the decision of the trial court stating that the rights of the Osinas vested prior to the adoption of the Lake Michigan and the Chicago Lake Front Protection Ordinance in Octo-

ber of 1973 and prior to the adoption of the Planning Unit Development Ordinance in March of 1974.

In Mr. O'Connor's letter he asks your department to issue a letter certifying that the proposed use conforms with all the applicable provisions of the zoning ordinance. The proposed construction is authorized pursuant to a court order which was affirmed by the Appellate Court and as such it would be proper for your department to issue a letter stating that the court had granted the special use in this matter.

AIRPORT APPROACH ZONES— HEIGHT RESTRICTION ORDINANCE

*(Acting Commissioner, Department of Aviation—
J. R. P.—February 4, 1976)*

In a recent meeting in the Department of Aviation with Mr. James Sachay and representatives of Landrum and Brown, Airport Consultants, the Law Department was requested to submit an opinion regarding Local or State zoning ordinances which would protect the approach zones for runways 14R and 14L from interference by buildings erected on Parcels 9-1-A, D-82, D-82A and D-82B, obviating the necessity of purchasing said parcels or aviation easements therein. Such opinion is to be forwarded to the Federal Aviation Administration, Chicago Airports District Office, in conjunction with the City's application for final payment for FAAP Project No. 9-11-012 C 515.

Please be advised that according to Illinois Revised Statutes, 1973, Chapter 15-1/2, Sec. 48.17, the Department of Aeronautics of the State of Illinois is empowered to adopt, administer and enforce airport zoning regulations. Pursuant thereto, and upon proper notice and public hearing had as required by Section 48.19 of the aforesaid Statute, the Department of Aeronautics of the State of Illinois adopted, on January 20, 1965, zoning regulations for Chicago-O'Hare International Airport, Said regulations, which are attached hereto as Exhibit 1, establish various zones and height limitations defined by slope ratios, above which no structure shall be erected, nor tree allowed to grow.

The critical slopes with regard to Parcels 9-1-A, D-82, D-82-A and D-82-B are:

- (a) The Instrument Approach, zone slope of one (1) foot in height for each sixty (60) feet in horizontal distance beginning at a point 200 feet from the end of the Instrument Runway.
- (b) The non-Instrument Approach zone slope of one (1) foot in height for each fifty (50) feet in horizontal distance beginning at a point 200 feet from the end of the non-Instrument Runway; and
- (c) The inner horizontal zone slope of one (1) foot in height, for each sixty (60) feet in horizontal distance beginning at a point 35 feet above the established airport elevation measured at the periphery of the Airport.

All improvements on Parcels D-82, D-82-A and D-82-B and 9-1-A conform to the height limitations. The various distances from the periphery of the Airport and from the point 200 feet from the end of the Runway are indicated on Exhibits 2 and 4 attached hereto, and the slopes indicating the height limitations and the various improvements are plotted on Exhibits 3 and 5. The transitional zone slope of 7:1 is plotted on Exhibit 6.

It is our opinion that the aforesaid regulations adopted pursuant to Illinois Revised Statutes, Chapter 15-1/2, Sec. 48.17 et seq. afford sufficient protection for the runway approaches for 14R and 14L; said approach zone slopes being more restrictive than those required by Federal Aviation Regulation Part 77.

FLOOR AREA RATIO FOR JOINED STRUCTURES

*(Zoning Administrator, Department of Buildings—
H. F. W.—March 15, 1976)*

We wish to acknowledge receipt of your letter of February 27, 1976, in which you request a clarification of Article 5.7-6 of Chapter 194A of the Municipal Code as it pertains to an application for an addition to an existing four story apartment building located on an adjacent parcel of land to 3150 North Sheridan Road.

You indicated that your office had received and approved an application for a building permit to construct a 28 story, 106 dwelling unit apartment building at 3150 North Sheridan Road on a parcel of land containing 18,332.8 square feet. You question your authority to process an application for a building permit for an addition to the four story apartment building located on the contiguous parcel to the south and request a clarification of the language in Article 5.7-6 as to whether the provisions dealing with contiguous zoning lots require that one of said lots be vacant.

Article 5.7-6 is entitled, "Floor Area Ratio Application in Particular Cases" and deals with cases where two or more contiguous zoning lots are in common ownership. This article, in effect, states that where a person has acquired the ownership of two continuous parcels, one of which was improved with a building at the time of the adoption of the ordinance, that said owner could apply the unused floor area of the existing building to his permitted maximum floor area ratio of the construction on the adjoining contiguous lot. The article also provides that should the pre-existing building exceed the permissible floor area ratio on that zoning lot, said excess permissible floor area ratio need not be applied to and deducted from the floor area ratio of the new construction on the contiguous zoning lot.

Your question does not deal with either of the situations contemplated in Article 5.7-6. From the facts submitted to our office, you have approved and processed a building permit application for the 28 story building on the northern contiguous parcel carrying an address of 3150 North Sheridan Road. While your letter does not state so, we conclude from its context that the existing four story apartment building on the southern contiguous lot is not built up to the permitted floor maximum area ratio, and that the application that you are processing at this time is a request for an alteration which would join the 28 story building with the four story pre-existing building so that said two structures would, in fact, become one building and the total permissible floor area ratio for both of the contiguous lots could be applied and would not exceed that required if the two buildings were joined and considered as one principal structure. The construction joining the new 28 story building and pre-existing four story building must be material and substantial so that it may be considered as an integral part of the overall building.

EFFECT OF COUNCIL PLAT APPROVAL ON ZONING REQUIREMENTS

*(Zoning Administrator, Department of Buildings—
H. F. W.—March 23, 1976)*

We wish to acknowledge receipt of your letter of February 19, 1976 in which you request an opinion as to whether the recording of a current resubdivision of property operates to supersede the requirements of Section 7.5(5) and Section 7.5-2 of the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago.

Section 7.5(5) entitled "Lot Area-Use and Bulk Regulations" reads as follows:

"In all residence districts, no detached residential building shall be erected on a lot, other than a lot of record on the effective date of this comprehensive amendment which is less than 5,000 square feet in area, unless otherwise provided for in this comprehensive amendment."

Section 7.5-2 entitled "Minimum Lot Area-R2 Single Family Residence," reads as follows:

"In an R2 District, there shall be provided not less than 5,000 square feet of lot area per dwelling unit, except that in cases where the predominant number of lots of record on the effective date of this comprehensive amendment, fronting on the same side of the street between the two nearest intersecting streets, have a lot area less than that prescribed by the regulation of this district, then, and in that event, the lot area requirement shall be that of the existing lot areas in the area previously described, but in no event shall the lot area requirement be less than 3,750 square feet."

Under these two provisions of the Chicago Zoning Ordinance, a single family residential building may not be erected on a lot containing less than 5,000 square feet unless that parcel was a lot of record at the time of the adoption of the comprehensive zoning ordinance in 1957. Neither of the above provisions provide for reducing the minimum lot area in an R2 district below that of 5,000 square feet by the resubdivision of existing properties at time of the adoption of the comprehensive zoning ordinance in 1957.

The applicant herein has resubdivided his property in accordance with the provisions of the Illinois Revised Statutes 1975, Chapter 109 entitled "Plats Act" and submitted said resubdivision to the City Council of the City of Chicago for approval. The applicant contends that by reason of the fact that the resubdivision was approved by the City Council that this official act in effect superseded requirements of Sections 7.5(5) and Section 7.5-2 of the Chicago Zoning Ordinance.

Illinois Revised Statutes 1975, Chapter 109, Section 1 reads in part as follows:

"... whenever the owner of land subdivides it into 2 or more parts, any of which is less than 5 acres, he must have it surveyed and a plat thereof made by registered land surveyors, which plat must particularly describe and set forth all public streets, alleys, ways for public service facilities, parks, playgrounds, school grounds, or other public grounds, and all the tracts, parcels, lots, plats, and numbering all such lots or parcels by progressive numbers, giving their precise dimensions . . ."

Illinois Revised Statutes, 1975, Chapter 109, Section 2 reads in part as follows:

"... the plat must be submitted to the City Council of the City . . . , for their or his approval, if the land subdivided is located within the corporate limits of any city, . . .

The provisions of Chapter 109 pertain to the procedures that a land owner must follow in order to subdivide his land and have the plat showing said subdivision filed of record in the proper local recording office. The enabling legislation authorizing a municipality to regulate and classify uses of property within its corporate limits is derived from Division 13 and Division 14 of the Illinois Revised Statutes, 1975, Sections 11-13-1 through 11-13-20 inclusive and Sections 11-14-1 through 11-14-4.

The Chicago Zoning Ordinance, Chapter 194A of the Municipal Code was the legislative enactment by the City Council of the City of Chicago to classify and regulate the uses of land within the corporate limits of the City of Chicago. The procedures for amending the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code are set forth in Sections 11.9-1 through 11.9-8.

A resubdivision of property by an owner is that owner's declaration of the proposed uses he would like to make of his property. To interpret the requirement for council approval of a subdivision as a legal change, i.e. a change of zoning classification would in effect confer on a property owner the right to amend the zoning ordinance at his discretion without observing the procedures set out in the Chicago Zoning Ordinance for the enactment of a zoning amendment.

The wording in Section 7.5(5) and Section 7.5-2 is clear. A minimum lot area of 5,000 square feet per dwelling unit is required under an R2 Zoning Classification unless the parcel was a lot of record in effect in 1957 when the comprehensive zoning ordinance, Chapter 194A was enacted. An owner of land cannot circumvent or defeat this explicit requirement by filing a subdivision plat and submitting that plat to the city council for approval. It is the opinion of our office that the filing of a subdivision which has been approved by the City Council does not operate retroactively to constitute an amendment to the Chicago Zoning Ordinance.

COUNCIL APPROVAL OF PLAT OF RESUBDIVISION

*(Chairman, Committee on Local Industrial, Streets and
Alleys—H. F. W.—March 29, 1976)*

We wish to acknowledge receipt of your letter of February 27, 1976 to which you attached a copy of a proposed ordinance and a letter dated February 24, 1976 from Mr. Lewis W. Hill, Commissioner of the Department of Development and Planning, which documents we herewith return to you. In your letter you requested an opinion as to the legality of your committee acting upon the proposed ordinance dealing with the approval of the plat of resubdivision.

A resubdivision of property by an owner is that owner's declaration of the proposed uses he would like to make of his property. The applicant herein has resubdivided his property in accordance with the provisions of the Illinois Revised Statutes, 1975, Chapter 109, entitled "Plats Act" and submitted said resubdivision to the city council for approval.

Illinois Revised Statutes, 1975, Chapter 109, Section 1 reads in part as follows:

" . . . whenever the owner of land subdivides it into 2 or more parts, any of which is less than 5 acres, he must have it surveyed and a plat thereof made by registered land surveyors, which plat must particularly describe and set forth all public streets, alleys, ways for public service facilities, parks, playgrounds, school grounds, or other public grounds, and all the tracts, parcels, lots, plats, and numbering all such lots or parcels by progressive numbers, giving their precise dimensions . . . "

Illinois Revised Statutes, 1975, Chapter 109, Section 2 reads in part as follows:

" . . . the plat must be submitted to the City Council of the City . . . , for their or his approval, if the land subdivided is located within the corporate limits of any city, . . . "

The provisions of Chapter 109 of the Illinois Revised Statutes, 1975, pertain to the procedures that a land owner must follow in order to subdivide or resubdivide his land and have the plat showing said subdivision or resubdivision filed of record in the proper local recording office. The resubdivision by an owner does not affect, change, or amend any of the provisions of the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago.

The proposed resubdivision covers two parcels of property. Parcel 1 is the city block bounded by East 80th Street, East 81st Street, South University Avenue and South Woodlawn Avenue. Parcel 2 is a triangular area having a frontage of approximately 68 feet on the north side of East 81st Street and a frontage of approximately 353 feet on the east side of South University. Parcel 1 is presently improved with eight multi-unit townhouse structures with the northern portion used for off-street parking. Parcel 2 is designated for off-street parking for some of the dwelling units located on Parcel 1.

The townhouses were built pursuant to a Court Order entered on January 25, 1967 by the Honorable Charles S. Dougherty, Judge of the Circuit Court of Cook County, in case No. 65 L 3075 entitled "First National Bank of Blue Island u/t No. 1770, et al v. City of Chicago, et al." At the time the developer first applied for a building permit, both parcels 1 and 2 were zoned R4 General Residence District. On December 20, 1965, the city council rezoned the property. Parcel 1 was rezoned from an R4 Residence zoning classification to that of an R2 Single Family Residence District. Parcel 2 was rezoned from an R4 General Residence District to that of an M1-2 Restricted Manufacturing District.

At the time of the construction, the eight buildings, each containing eight dwelling units, by the terms of the Court Order were required to conform to the R4 General Residence District requirements as to lot area, side yards and etc. Had the city council not rezoned the property, the existing buildings would conform to the zoning ordinance provisions of an R4 General Residence District. Being multi-dwelling unit buildings, two-story townhouses, eight to a building, the various lot area and side yard requirements applied to each building rather than to each dwelling unit. The eight separate buildings, having been built pursuant to Court order were lawful in their inception and have, by virtue of the city council rezoning of December 20, 1965, become a lawful non-conforming use.

The plat of resubdivision in effect creates a separate legal title description for each separate dwelling unit. A City Council Ordinance approving the

applicant's proposed resubdivision is an official act by the City Council pursuant to the Illinois Revised Statutes, 1975, Chapter 109 and in effect enables the applicant to have a separate legal description for each apartment in the townhouses. City council approval of the proposed subdivision does not constitute a legal change of the zoning classification nor does the approval of said resubdivision operate retroactively so as to, in effect, supersede the lot area and side lot requirements of the existing zoning classification.

It is the opinion of our office that the proposed applicants have properly submitted their plat of resubdivision to your council committee for approval.

LIQUOR LICENSE ZONING ORDINANCE REQUIREMENTS

*(Zoning Administrator, Department of Buildings—
H. F. W.—March 30, 1976)*

We wish to acknowledge receipt of your letter of December 4, 1975. You attached an application for a Retailer's Liquor License and supporting documents which we herewith return to you. You requested an opinion as to whether or not the judgment order you attached was sufficient basis for the approval of the liquor license application, as to zoning.

The subject property was zoned B4-1 Restricted Service District, under which zoning classification a retail sales building was a permitted use. At the time the applicant applied for a building permit to construct a retail sales building, the city council was in the process of rezoning the property to an R3 General Residence District classification and the Department of Buildings refused to issue a building permit. The applicant then filed a Mandamus action, in which proceeding the court held that the plaintiff had acquired a vested right to construct a retail sales building and entered the order on December 7, 1973, pursuant to which the existing building on the subject property was constructed.

By virtue of the rezoning of the property to an R3 General Residence District classification, the applicant's existing building became a non-conforming building and the applicant's existing use, that of a retail sales building, became a non-conforming use. While it is true that had the property remained zoned B4-1 Restricted Service District, the proposed use of the property for a packaged-goods liquor store, in addition to the existing retail sales store, would have been permitted. The rezoning made the retail sales use a non-conforming use which is subject to the provisions of Article 6 of the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago.

Additions and enlargements to non-conforming buildings and structures are subject to the provisions of Section 6.4-2 of the Chicago Zoning Ordinance, which reads in part as follows:

"A non-conforming building or structure which is non-conforming as to bulk, or all or substantially all of which is designed or intended for a use not permitted in the district in which it is located shall not be added to or enlarged in any manner unless such additions and enlargements thereto are made to conform to all the regulations of the district in which it is located, and unless such non-conforming building or structure, including all additions and enlargements thereto, shall conform to: . . ."

The expansion of a non-conforming use is subject to the provisions of Section 6.4-6 of the Chicago Zoning Ordinance, which reads as follows:

"The non-conforming use of part of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, may be extended throughout the building or structure in which said use is presently located, but no changes or structural alterations shall be made unless such changes or structural alterations and the use thereof conform to all the regulations of the district in which the building or structure is located, and such expansion shall not extend or otherwise modify the provision for amortization applicable to such building or structure and use thereof as provided in sub-section 6.4-8 hereof."

The change of use in a non-conforming building is subject to the provisions of Section 6.4-7, which reads as follows:

"The non-conforming use of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, may be changed to a use permitted in the same district as the non-conforming use which presently occupies the building or structure or to a use permitted in a more restrictive district, but no such change shall extend or otherwise modify the provisions for elimination of such non-conforming building or structure and the use thereof as provided in subsection 6.4-8 hereof. For the purpose of this subsection only, the R1 District shall be considered the most restrictive and the M3 District the least restrictive district."

The existing non-conforming building was constructed pursuant to the court order of December 7, 1973 and upon its completion the existing non-conforming retail sales use was commenced pursuant to that same court order. The present application for a City Retailer's Liquor License, in effect, is a request for an expansion of a non-conforming use in a non-conforming building and is not permitted under the provisions of the Chicago Zoning Ordinance.

It is the opinion of our office that the application for a City Retailer's Liquor License amounts to a request for an expansion of a non-conforming use and, as such, should not be approved.

TERMINATION OF PROPERTY USE AS HALFWAY HOUSE

(Zoning Administrator,—H. F. W.—April 21, 1976)

Confirming our several phone conversations pertaining to the above captioned matter, we wish to advise you that the applicant had applied for the use of the premises for a half-way house and that after a full and complete hearing the Zoning Board of Appeals denied the requested use. The applicant then appealed the decision of the Zoning Board of Appeals to the Circuit Court of Cook County and on March 10, 1975, Judge Edward F. Healy entered an order sustaining and affirming the decision of the Zoning Board of Appeals in denying the applicant's use of the premises as a half-way house.

The court has not entered an order staying the effect of the zoning ordinance as it applies to this parcel of property and, therefore, any use of the subject property for that of a half-way house is unlawful and in violation of the Chicago Zoning Ordinance.

Pursuant to the provisions of the zoning ordinance, it is within the authority of the Zoning Administrator to issue an order directing the termination of the use of the premises for that of a half-way house and to effectuate that order with a stop order if necessary.

We sincerely trust that this will enable you to proceed with the finalization of this matter.

PERMISSION TO CONSTRUCT DWELLING BY COURT ORDER

*(Commissioner, Department of Buildings—H. F. W.
—May 27, 1976)*

We wish to acknowledge receipt of Mr. Manley's letter of May 24, 1976 pertaining to the erection of a single family residence at the above address. He attached a copy of a Judgment Order to his letter, which we herewith return to you.

On March 18, 1971, Judge Edward J. Egan of the Circuit Court of Cook County entered an order in favor of the plaintiff which declared that the plaintiff could construct a single family dwelling on the subject property. The City filed an appeal and on October 16, 1973, the Appellate Court affirmed the trial court's decision.

In your letter you state that the applicant herein has filed an application for a building permit to authorize the construction of a single family residence at the above address. In view of the fact that the court has determined that the construction of a single family home at the above address would be proper and in view of the fact that the Appellate Court has affirmed this decision, it is the opinion of our office that it would be proper for you to process the pending application for the construction of a single family residence.

APPLICABLE LAW—PERMIT APPLICATION FOR ZONING APPROVAL

(Zoning Administrator, H. P. W.—June 16, 1976)

We wish to acknowledge receipt of your letter of June 3, 1976. You attached a copy of an application for a building permit and a copy of the appellate court decision in the *American Oil Corporation v. City of Chicago* case to your letter which we herewith return to you.

In your letter you indicated that the subject property is presently classified as R4 General Residence District on the official zoning maps and has been so classified since the amendment in 1971. The trial court in case number 73 L 9859 had upheld zoning amendment of 1971.

The property had been reclassified from a B4-3 Restricted Service District to that of an R4 General Residence District. The appellate court decision reversed the trial court and held that the June 1971 zoning amendment was void because the legislative procedures did not conform to the notice and hearing requirements of the Illinois Statutes and the Chicago Zoning Ordinance and as such was invalid and of no effect. The factual impact of this appellate court decision means that the subject property has never been rezoned, so that the

zoning prior to June of 1971 was B4-3 Restricted Service District and has remained said classification up until the present time.

From a review of the application for a building permit you attached, it appears the proposed use of a one story brick drive-in restaurant that said use is a permitted use under the B4-3 classification and it is within your authority to receive and process that permit application for zoning approval.

The appellate court decision was not a case of the type of declaratory judgment action wherein the court authorized a specific building project or type of construction. All the appellate court did was declare the attempted R4 General Residence rezoning invalid so that the property remained zoned as B4-3 Restricted Service District.

The documents you submitted to our office raise a question as to when and if the plaintiff's right to proceed with construction had vested so as to determine what ordinances this applicant must comply with. The permit application appears to be dated May 19, 1976 so any rights asserted by the applicant for the construction of the proposed facility would be subject to all applicable ordinances of the City of Chicago in effect at the time the application was filed with your department.

Your letter really is a request for an opinion as to whether you, as a zoning administrator, have the authority to certify the proposed use as a permitted use in the B4-3 classification. The property being zoned B4-3, and the proposed use being a permitted use under the B4-3 classification, it follows that it is within your authority to act upon the application and certify said application as to zoning.

PLANNED DEVELOPMENT CONTRACTUAL IMPLEMENTATION

*(Commissioner, Department of Development and
Planning—H. F. W.—June 25, 1976)*

On June 17, 1976, the Office of the Corporation Counsel received a letter from Arthur Rubloff & Co. to which said developer attached a revised garage lease and operating agreement dated June 16, 1976 pertaining to the facilities covered by your Planned Development Ordinance which approved the Michigan Square Venture.

On October 31, 1974, our office had written opinions on this project to both you and the Chairman of the Building and Zoning Committee of the City Council, copies of said opinions are attached hereto. Subsequent thereto, the developer's Planned Development was approved.

We have reviewed the revised garage lease and operating agreement dated June 16, 1976 with the original garage lease and operating agreement dated August 9, 1974. It appears that the basic provisions pertaining to the providing of parking facilities have been more clearly spelled out and the identity of the lessee, namely, the Marriott Corporation, has been inserted into the revised lease. The term of the lease has been extended from 30 to 40 years, the purchase price of two million dollars remains the same; however, formulas for price escalation have been inserted in the lease keyed to consumer price indexes. The revised lease also spells out the detailed procedures for conveying title if the lessee exercises the options therein to purchase.

The revised lease also spells out the details of the operating agreement between the parties, lessor-operator, as well as the specific details for the operation of the parking facility in conjunction with the completion of the hotel facility. It appears that many of the additions and insertions in the revised lease pertain to requirements dealing with specificity, insurance requirements and provisions for damage or claim adjustments and appear to be inserted in this revised lease probably at the request of the mortgage companies funding the project and/or as a direct result of detailed negotiations between the various parties, namely, the lessor-operator, lessee and Marriott.

Mr. Daniel M. Schuyler, Jr., an attorney for Arthur Rubloff & Co., has requested that the City of Chicago review the proposed lease and advise the parties that the revised lease is acceptable as part of the original planned Development Ordinance approval.

Since it is not the policy of the Corporation Counsel's Office to render private legal opinions to individual companies, we are attaching the letter from Arthur Rubloff and the revised garage lease to this letter and will recommend to Mr. Schuyler that he contact the Department of Development and Planning pertaining to this matter.

In summary, it is the opinion of the writer that the changes detailed, including the additional specifications as to terms and conduct between the parties, are not substantive nor do they change the duties, obligations and relationships imposed by the lease upon the owner of the property, the applicant for the Planned Development, the lessor-operator and the lessee.

PROPOSED STADIUM SITE— O'HARE LAND USE RESTRICTION ZONE

(C. S. I., *Federal Aviation Administration—R. L. H.—*
August 12, 1976)

Please be advised that the City of Chicago is in receipt of the above cited Notice relating to the proposal of the Village of Rosemont to construct a stadium in the instrument approach zone for and on the centerline of Runway 22R at Chicago-O'Hare International Airport.

A letter from the City of Chicago Department of Development and Planning attached hereto sets forth quite succinctly the objections of the City of Chicago to this proposed construction and very little needed be added thereto.

It is important to note, however, that the O'Hare Zoning Regulations as promulgated, adopted and administered by the State of Illinois Department of Transportation, Division of Aeronautics, obligates a political subdivision with control over property in the Land Use Restriction Zone to discourage the development of such property with places of public assembly. These Regulations, then, obligate the Village of Rosemont to discourage *itself* from the construction of the stadium, the subject matter of the above cited Notice, and rather than following said Regulations, the Village of Rosemont has chosen to totally disregard same and is, *itself*, proposing to construct a stadium which is not only a discouraged use thereunder but is clearly a non-compatible use and possibly a use which could prove dangerous to the public health and welfare.

We deem it necessary to also comment on the Zoning propriety of the area where the stadium is to be located. Said property is currently zoned for residential use and, if the Rosemont Zoning Ordinance is worded comparably to

the Chicago Zoning Ordinance, municipal recreation buildings are "Special Uses" rather than "Permitted Uses" and a formal request for the "Special Use" would be required. Further, under the Zoning Regulations for O'Hare, a public hearing would be required with at least thirty days prior notice thereof to the City, the State's Division of Aeronautics and the Federal Aviation Administration. To this end we suggest that you obtain a copy of Rosemont's Zoning Ordinance to determine the exact status of the property upon which this proposed construction is contemplated.

We assume that the Village of Rosemont either has been or will be advised that aircraft noise at the proposed location may be of a level that would prove to be non-compatible with utilization of the proposed stadium and, further, that any complaints in that regard when the stadium is built and occupied will be totally disregarded on the basis that they knew what they were getting into prior to construction.

A copy of this letter, with attachment, is being sent this date to the Director of the Division of Aeronautics, State of Illinois Department of Transportation.

CITY AIR RIGHTS AND BUILDING HEIGHT RESTRICTIONS

*(Chief, Airspace and Procedures Branch of the Federal
Aviation Administration—R. L. H.—August 18, 1976)*

The City of Chicago is in receipt of your notice in the above-cited matter reducing the proposed height from that previously proposed in case 76-GL-386-OE which was objected to on two bases; violation of the State of Illinois O'Hare Zoning Regulations' height limitations and an intrusion into the air rights over the subject property purchased by the City of Chicago in a condemnation case in the Circuit Court of Cook County, 61 C 17337.

Please be advised that this proposed construction has been reviewed with relation to the height limitations of the O'Hare Zoning Regulations and a maximum height of 693 AMSL is acceptable thereunder.

Please be further advised, however, that a review of the subject proposal in the light of the City's ownership of air rights reduces this maximum height somewhat.

In discussion with the proponent, Mr. Paul W. Swanson, he advises that the ground level at the site will be 643.5 AMSL rather than the 642 AMSL indicated on the notice form due to water table requirements. He further advises that the building itself would be 38 feet high for a height of 681.5 AMSL. This height is acceptable.

In addition, the proponent advises that two mechanical penthouses on the roof are to be located at the center line of the building for an additional seven (7) feet of height to a grand total maximum of 688.5 AMSL at those points.

Our plotting of the air rights purchased by the City in the aforementioned condemnation action reveals that if these penthouses are located east of the center line of the building, the 688.5 AMSL resulting therefrom would be just under the City's air rights and the proposed construction, therefore, would not be objectionable.

Please be advised that so long as the proponent will relocate the pent-

houses east of the center line of the building such that the maximum AMSL at that location is 688.5 feet and the maximum height of the closest edge of the building to the airport is 681.5 AMSL, the City of Chicago has no objection to the proposed construction.

EXEMPTION FROM PROVISION OF OFF-STREET PARKING REQUIREMENT

*(Zoning Administrator, Department of Buildings,—
H. F. W.—January 12, 1977)*

We wish to acknowledge receipt of your letter of December 7, 1976 to which you attached the application for permit, a copy of violation notice dated March 10, 1976 and the Court Order entered by Judge Arthur L. Dunne in Case No. 73 L 14659 on March 7, 1974. In your letter you request advice and direction as to the form of your zoning certificate.

The subject property is located in a B3-3 General Retail District and is presently improved with an existing theater building. The Miracle Live Temple and its congregation had applied to the Zoning Board of Appeals for approval of a special use to permit said religious organization to use the existing theater building for a church without providing off street parking as would be required for the establishment of a new church at this location.

The Zoning Board of Appeals denied its application for a special use and the plaintiffs filed an Administrative Review proceeding. Judge Dunne entered an order reversing the decision of the Zoning Board of Appeals and directed that the plaintiffs be allowed to use the premises as a church and for other religious purposes without off street parking. The Court also directed you as Zoning Administrator to issue the necessary special use permit for the use and occupancy of the premises as a church without provisions for off street parking.

It is the recommendation of this office that in processing the application for a permit your zoning certificate should read substantially as follows:

“Approved as to Zoning, pursuant to court order entered March 7, 1974 by Judge Arthur L. Dunne in Case No. 73 L 14659 authorizing the use of the subject premises as a church without provisions for off street parking.”

You should place this same certification on any and all other documents and plans pertaining to this proposed use. We sincerely trust this will enable you to process the application for permit, which we herewith return to you.

CONVERSION OF UNDERTAKING ESTABLISHMENT TO PRIVATE CLUB

(Zoning Administrator—H. F. W.—March 1, 1977)

We wish to acknowledge receipt of your letter of January 4, 1977 in which you request advice as to what action you should take pertaining to an application for a liquor license in conjunction with the operation of a private club at 3021 West Lawrence Avenue. You attached a copy of a court order to your letter which we herewith return to you.

The property at 3021 West Lawrence had been used as an undertaking establishment. The property at 2929-35 West Lawrence Avenue had been used by the undertaking establishment for an off-street parking facility pursuant to a special use variation granted by the Zoning Board of Appeals on July 12, 1954. The Ecuadorian League filed an application with the Zoning Board of Appeals to permit them to use the building at 3021 West Lawrence Avenue as a private club. The league also filed an application with the Zoning Board of Appeals to permit the club to use the off-street parking facility located at 2929-35 West Lawrence Avenue as the required off-street parking for the club activity.

The Zoning Board of Appeals denied the Ecuadorian League's application for a substitution of use as to the club facility and denied the application for use of the premises at 2929-35 West Lawrence Avenue as an off-street parking facility. The Ecuadorian League appealed. On December 29, 1976 Judge Philip A. Fleischman entered an order reversing the decisions of the Zoning Board of Appeals. The order provided that the premises at 3021 West Lawrence Avenue may be used as a private club and that the premises at 2929-35 West Lawrence Avenue may be used as an off-street parking facility in conjunction with the private club.

The Order directed the Zoning Administrator to certify the use of the premises at 3021 West Lawrence Avenue as a private club. The court ordered the Zoning Administrator to approve the establishment of an off-street parking facility at 2929-35 West Lawrence Avenue in accordance with the provisions of a special use for off-street parking. The Court clarified this order by stating that the Ecuadorian League may use the premises at 3021 West Lawrence Avenue as a private club only in conjunction with the use of the premises at 2929-35 West Lawrence Avenue for off-street parking for the private club. The order stated that the Ecuadorian League must improve the off-street parking facility with drains, paving and fencing and otherwise conform to the improvement requirements of a special use for off-street parking.

It is the opinion of this office that you may approve the application for a liquor license as to zoning. You should mark said approval to indicate that the establishment of the club and the use of the off-street parking facility is pursuant to the court order of December 29, 1976 entered in Case No. 76 L 8435.

EFFECT OF CONTINUING NON-CONFORMING USE—ZONING CERTIFICATION

*(Commissioner, Department of Buildings—H. F. W.
—March 10, 1977)*

We wish to acknowledge your letter of February 22, 1977 in which you requested our office to review the application for a liquor license pertaining to the above address. You attached supporting documentation to your letter, which we herewith return to you.

The subject property is zoned R5 General Residence District classification. Under said classification the dispensing of liquor is not permitted use. However, according to the information furnished, the above premise has been continuously used for the dispensing of liquor since prior to adoption of the 1957 Comprehensive Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago.

Under the ordinance the use of the subject premise for the retail sale of

liquor has been a non-conforming use since 1957 and unless said use has been abandoned so as to interrupt the non-conforming use for longer than six months, said non-conforming use may be continued.

We have reviewed the order of the License Appeal Commission entered on April 12, 1976 and the Court Order entered on February 14, 1977 by the Honorable Richard L. Curry, Judge of the Circuit Court. It appears that the only interruption in the continuity of use is the revocation by the Local Liquor Control Commissioner and the time for the Appeal to the License Appeal Commission and the Circuit Court. It therefore follows that there has been no break in continuing the use on part of the applicant, so that there has not been a discontinuance of non-conforming use for a period of six consecutive months as required under Section 6.5-2 of the Chicago Zoning Ordinance.

It is the opinion of our office the zoning certification may be made on the basis of continuing of a lawful non-conforming use.

INJUNCTION AGAINST USE OF BASEMENT AS DWELLING

*(Zoning Administrator, Department of Buildings—
H. F. W.—April 26, 1977)*

We wish to acknowledge receipt of your letter dated April 6, 1977 in which you request us to review the application and plans mailed to your office. You also attached a copy of a building permit, a set of drawings and a copy of a court order entered October 30, 1973 by Judge Richard Jorzak, to your letter, which we herewith return to you.

The plans submitted show that the proposed remodeling is of a basement apartment. The application for a building permit describes the work of constructing an additional entrance to an existing basement apartment.

The order for permanent injunction in case #73 CH 51290, *The City of Chicago v. Emmitt McNeal, et. al.*, clearly states that the applicants for the building permit are permanently enjoined and restrained from using the basement of the property at 4348 West Wilcox as a dwelling unit. This case was a building ordinance enforcement case to eliminate the illegal basement apartment.

It is the opinion of our office that the court order clearly enjoins the applicants from using the basement as an apartment and therefore the application for remodeling work in conjunction with said basement apartment should be denied.

LOT AREA REQUIREMENTS— R-3 ZONING

*(Zoning Administrator,—H. F. W.—
September 2, 1977)*

We wish to acknowledge receipt of your letter dated August 8, 1977 in which you requested advice as to whether you may certify an application for a building permit. You attached a copy of a building permit application, a survey and a Court Order to your letter, which we herewith return to you.

The subject property is located in an area zoned R3 General Residence District. In an R3 District, there shall be provided not less than 2500 square feet of lot area for each dwelling unit. The subject parcel has a total lot area of 4,340 square feet. The survey shows that the property is presently improved with a single family frame residence. The application indicates that the developer proposed to construct a two dwelling unit building on the property. Since the lot does not have the required area of 5,000 square feet, you should not approve the application for the construction of a two dwelling unit.

Since the parcel shown on the survey has been used as a single family residence since prior to the enactment of the 1957 Comprehensive Zoning Ordinance Amendment, you may determine that the parcel shown, "namely part of lot 26 and part of lot 27" constitutes a zoning lot. A review of the application shows that the developer is not subdividing a zoning lot and therefore the O'Laughlin decision does not apply to this matter.

It is the opinion of our office that you may determine that the parcel of land shown on the plot of survey is a zoning lot under the Chicago Zoning Ordinance and that the developer may wreck and remove the existing single family residence and construct a new single family residence on said parcel. We sincerely trust this will enable you to process the application and documents submitted to you.

R-4 CLASSIFICATION—DORMITORY

*(Zoning Administrator—H. F. W.—
September 6, 1977)*

We wish to acknowledge receipt of your letter of August 17, 1977, in which you requested advice as to what position your office should take in respect to the application submitted to your department. You attached a copy of an application for a building permit and four copies of blue prints to your letter, which we herewith return to you.

We have reviewed the building permit application and the blue prints submitted for the purposes of determining the classification of the proposed use and the existing status of the building in which the proposed remodeling is to take place. As you indicated in your letter, a dormitory is classified as an accessory use, not a principal use. From a review of the documents submitted, we have determined that the building is a 4 dwelling unit structure which is permitted in the R4 General Residence District zoning classification. A dormitory is not a permitted use in the R4 classification.

The application for a building permit and the set of plans submitted herewith are incomplete and unacceptable since they do not comply with the provisions of the building code or the zoning ordinance. The application does not have a plot plan on page 3 and the blue prints are not stamped by an architect or engineer.

It is the opinion of our office that you should return the application and the blue prints to Mr. Robert Kopp, the agent for the applicant, Colleen Kolby Kurts. It is recommended that you spell out in detail all the various reasons why the application and blue prints are not acceptable when returning the application. We sincerely trust this information will be of assistance to you.

TAVERN IN GENERAL RETAIL DISTRICT

*(Zoning Administrator—H. F. W.—
September 6, 1977)*

We wish to acknowledge receipt of your letter dated August 2, 1977, in which you request advice as to what effect an order of the License Appeal Commission may have on your review of the liquor license application with respect to zoning. You attached a copy of the License Appeal Commission Order and a copy of the application for a liquor license to your letter which we herewith return to you.

The subject property is located in an area zoned B3-2 General Retail District. A tavern is not permitted use in said zoning classification. A review of the liquor license application shows that the lease runs from July 1, 1977 to June 30, 1982, which would indicate the establishment of a new business.

The Order entered by the License Appeal Commission pertaining to the right of Louis Pietschman pertains only to the right of that individual to a liquor license. It does not supersede or override the provisions of the Chicago Zoning Ordinance.

It is the opinion of our office that it is within your discretion to determine that the proposed use of the subject property for a tavern by this applicant is not permitted under the B3-2 General Retail District classification.

**CONSTRUCTION OF TWO-DWELLING UNIT
IN GENERAL RESIDENCE DISTRICT**

*(Zoning Administrator, Department of Buildings—
H. F. W.—October 25, 1977)*

We wish to acknowledge receipt of your letter of October 13, 1977 in which you request advice as to whether your zoning certification for the construction of a two dwelling unit building on the subject property will in any way contradict the Appellate Court decision in Case No. 59493 *O'Laughlin v. City of Chicago*. You attached a copy of a building permit application, a copy of the Appellate Court decision and a survey to your letter, which we herewith return to you.

The subject property is located in an area zoned R3 General Residence District under the provisions of the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago. The subject lot was improved in 1928 with a single family residence building, which the applicant proposes to demolish and seeks to replace with a two story two dwelling unit building. Since this parcel of land has been used as one tract for a residential use since 1928, considerably prior to the enactment of the 1957 Comprehensive Zoning Amendment, this parcel is a zoning lot which may be developed in accordance with the provisions of the zoning ordinances as they apply to a lot of record.

In the *O'Laughlin* case, the plaintiff there sought to divide one zoning lot into two separate parcels and construct on each parcel a separate building. In the case before you, there is no proposed subdivision of a zoning lot therefore the court's ruling as to construction on parcels resulting from the subdivision of a zoning lot do not apply.

It is the opinion of our office that your zoning certification for the proposed construction on the subject property will not conflict with or be in contradiction to the Appellate Court decision in the O'Laughlin case.

ADMINISTRATIVE DISCRETION— DETERMINATION OF ZONING CLASSIFICATION

*(Zoning Administrator—H. F. W.—
April 25, 1978)*

We wish to acknowledge receipt of your letter of March 20, 1978, in which you request that our office review your interpretation of the zoning ordinance and amendment as it pertains to the proposed development. You attached a copy of a building permit, a survey, and several pages of the Journal of Proceedings to your letter, which we herewith return to you.

In your letter you state that you have reviewed the provisions of the Chicago Zoning Ordinance, Chapter 194A of the Municipal Code of Chicago as it pertains to the subject property. You state you have also reviewed the zoning map in your office. Under the provisions of the Chicago Zoning Ordinance, Section 11.2-2, you as the Zoning Administrator are charged with the responsibility of enforcing the provisions of the zoning ordinance and all succeeding amendments. By subparagraph (4) you are charged with the responsibility for maintaining the permanent and current records of the zoning ordinance, all maps pertaining thereto and all amendments, special uses variations appeals and applications thereunder. It therefore follows that it is within your administrative discretion to review the zoning amendments and the zoning maps to determine the proper classification of any parcel of property within the corporate limits.

As to the specific parcels in your letter, if after reviewing the provisions of the Chicago Zoning Ordinance, Map 15-N of the Zoning Ordinance and the legal description in the amendment reclassifying this property, you determine that the subject property is properly classified as an R4 General Residence District and that Map 15-N reflects this parcel to be located in an R4 District, then it is within your discretion to approve the application for a building permit as to zoning.

We sincerely trust this will enable you to process this application.

LOCATION OF LANDFILL SITES WITHIN CITY

(Alderman,—P. L. B.—August 30, 1979)

Your letter of July 10, 1979 to Mr. William R. Quinlan, Corporation Counsel of the City of Chicago has been referred to me for reply. In your letter you request that we draft an ordinance regulating the location of landfill sites within the City of Chicago. Attached to your letter was an initial draft of such an ordinance. Additionally, we have since received another rough draft of this ordinance. You propose that the ordinance be inserted as an amendment to Chapter 17, Section 17-6.3 of the Municipal Code of Chicago.

In light of recent case authority, it is our suggestion that the proposed ordinance regulating the location of sanitary landfill sites be inserted as an amendment to the Chicago Zoning Ordinance, Chapter 194A of the Municipal

Code of Chicago. This conclusion is supported by the case of *County of Cook v. John Sexton Contractors*, 75 Ill.2d 494 (1979).

In *Sexton*, the court addressed the issue of whether a home rule unit could require a landfill owner's conformance to the home rule unit's zoning ordinance where the Illinois Environmental Protection Agency has already issued the owners an operating permit. In answering this question in the affirmative the court stated:

"The power of the Board to set uniform, statewide environmental standards and the power of the County [a home rule unit] to zone property within its boundaries are therefore evidenced as distinct but concurrent powers that must be exercised cooperatively in the interest of environmental protection. To this end, the County, in zoning land for landfill sites, must adhere to the environmental regulations adopted by the Board, while the Agency, operating under the Board's regulations, must comply with the County's zoning ordinance when issuing permits for landfill sites," *Sexton* at 516.

From the above it is clear that a home rule unit can, through its zoning power, designate the location of landfill sites so long as such zoning restrictions do not run afoul of regulations adopted by the Pollution Control Board which pertain to the location of landfill sites.

The *Sexton* court also limited the power of home rule units to legislate in environmental matters. The court concluded that a home rule governmental unit could legislate concurrently with the General Assembly on environmental control but that home rule governmental units "are limited to adopting only those uniform standards established by the Board pursuant to legislative authority." *Sexton* at 515. Accordingly since the City's ordinances pertaining to environmental matters must be uniform with the standards established by the Board, it is believed that the proposed ordinance should not be inserted as an amendment to the provisions contained in the City's Department of Environmental Control, Chapter 17 of the Municipal Code of Chicago.

A proposed draft of your ordinance is attached to this letter. The ordinance provides that no landfill site shall be established within three miles of a residence district and five miles of an existing landfill site. This provision might be objectionable on the grounds of "reasonableness" if its effect is to substantially ban landfill sites within the City. It also might be at odds with a statewide regulatory scheme regarding landfill locations if it frustrates the Board's regulations.

TEMPORARY MORATORIUM ON CONDOMINIUM CONVERSION

(*E. M. L.*,—*R. F. F.*—September 25, 1979)

This is in response to your letter of September 6, 1979 requesting information on the City of Chicago's attempt to impose a condominium conversion moratorium.

On March 21, 1979 a temporary moratorium on condominium conversion was passed by the City Council. The ordinance was designed to serve as a temporary measure only until a more satisfactory ordinance could be adopted. By its terms, the moratorium was to have lasted only 40 days. I have enclosed a copy of the ordinance as per your request.

You also requested a copy of the decision in *Chicago Real Estate Board v. City of Chicago*, No. 79 C 1284 which enjoined the City from enforcing the ordinance. Unfortunately, the opinion was unpublished. However, I am enclosing copies of the temporary restraining order and preliminary injunction, as well as transcripts of these proceedings, which offer considerable insight into the court's reasoning for enjoining the ordinance.

CHAPTER VIII—PUBLIC UTILITIES

Section A. RAILROADS

RESTORATION OF RAILROAD CROSSING AFTER TRACK REMOVAL

(Counsel, B & O and C & O Railroads—

M. G.—July 2, 1973

In accordance with the Order of the Illinois Commerce Commission of January 30, 1970 in Docket No. 55094 and with the X-Resolution of the Commission dated April 18, 1973, your Railroad has abandoned the captioned track by removing the rails and filling in the rutted area left by said track removal with asphalt.

The City of Chicago Department of Streets and Sanitation, Bureau of Streets, believes that there should be a complete removal of the ties and a restoration of the crossing compatible with the adjoining pavement, sidewalk, curbs, and drainage structures. We believe by doing this your Railroad will comply with the Order of the aforementioned docket and will make this crossing safer for the riding public. In its present state, the crossing is in a dangerous condition.

Kindly advise me what steps will be taken by your Railroad to comply with the Commission's Order and properly restore and renovate the crossing.

MAINTENANCE OF RAILROAD CROSSINGS

(Commissioner, Department of Streets and Sanitation—

B. R.—December 13, 1973)

Pursuant to notice as contained in my letter of November 14, 1973, a meeting was held on December 12, 1973 for the purpose of discussing the captioned matter. In attendance were various railroad attorneys and railroad engineers, representatives of the Department of Public Works and Bureau of Streets, a representative of the Illinois Commerce Commission and the writer. Honorable Aldermen John F. Aiello and Wilson Frost made a brief appearance at the meeting but had to leave to attend to important City Council business involving the employers' head tax.

A thorough and uninhibited dialogue between the parties resulted in the following:

1. A list, attached hereto, was presented containing the name of one individual from each Railroad who is to receive, process and act upon complaints. Complaints should be made *in writing* to these gentlemen. I shall soon receive the name, title and address of the representative to be contacted from the Grand Trunk Western Railroad Company. If any errors appear on this list, the writer would appreciate being so advised in order to correct the same.

2. The person to be contacted by the Railroads for assistance in matters generally related to this project is:

Mr. Hugh R. Short, Deputy Commissioner, Bureau of Streets, Room 704 City Hall, Chicago, Illinois, 60602. Telephone 744-4530.

3. Railroads are to present a list of all grade crossings, in Chicago, which they maintain.

4. Railroads are to furnish Mr. Short with the quantity requirements for hot-mix asphalt to be utilized during the period April 1-November 15, 1974. Also, Railroads are to advise Mr. Short of any labor contracts with their crafts which would prevent the City from delivering this material to Railroad sites. City will attempt to secure a hot-mix asphalt to be utilized by the Railroads. Since hot-mix is a petroleum product (petroleum is in short supply), City cannot guarantee that it will obtain supplies necessary for its projects and also amounts needed by the Railroads. However, our best efforts will be exerted in that direction.

5. A list, attached hereto, contains City's resurfacing of streets projects. The first two pages set forth completed projects; the next three pages contain resurfacing projects in which contracts have been awarded and work is to commence in 1974; the final page shows projects which are proposed. It is requested that the Railroads attempt to coordinate their maintenance of grade crossings with City's resurfacing projects. In this way, the railroads will be able to take advantage of City's control of street traffic during the construction period and also have the availability of hot-mix asphalt at the crossing site. City's goal is to have a compatible driving surface on City streets and across railroad grade crossings. Mr. Short is the person from the City to contact in this regard.

6. Railroads are required by General Order 138 of the Illinois Commerce Commission to provide sidewalks across their tracks where City provides the same up to the grade crossing. Railroad sidewalks are usually an extension of the wooden planking grade crossing. Failure to comply with the sidewalk provisions of General Order 138 should be brought to the attention of the Railroad representative as listed.

7. Mr. Short, upon written request, shall forward to Railroad representatives a list of the streets in Chicago which are maintained by the State, County or City. The list shows the streets maintained by the State and County. Those streets not ascribed to State and County responsibility, are maintained by the City.

Another meeting, in this cause, is scheduled for January 23, 1974, at 10:00 a.m. in Hearing Room A, Room 201, City Hall. Should any questions arise prior to this time, the writer can be contacted by telephone at 744-6913 or 744-6914.

FARE INCREASE PROPOSAL—CITY PARTICIPATION IN HEARINGS

*(Assistant Corporation Counsel—City of Peoria—
B. R.—March 27, 1974)*

We are in receipt of your letter of March 25, 1974 relative to the captioned matter. In response to your inquiries, kindly be advised that the City of Chicago intends to participate in this proceeding as we do in all fare increase proposals affecting our City. At the present time, we have not formulated a

position as to the proposed fares under Rock Island's Application. Our position is usually developed after the Railroad's case-in-chief has been presented, the direct case of other parties presented and cross-examination has been completed.

It is our opinion that a field hearing in Peoria would be helpful to the resolution of the issues. We would inquire whether your Client is considering the filing of a Motion with the Illinois Commerce Commission requesting that a field hearing be held in Peoria.

DISCONTINUANCE OF COMMUTER SERVICE

*(Chairman, Regional Transportation Authority
—B. R.—October 29, 1975)*

It has come to our attention that the Milwaukee Road has made certain representation to the RTA for the purpose of securing support of its proposal to discontinue the captioned commuter service.

The writer has been involved with retaining passenger train service on behalf of the City of Chicago. This effort pre-dates the birth of AMTRAK and the creation of the RTA. Our office is familiar with the subject Milwaukee Road service since we were successful in opposing the discontinuance of these trains between Fox Lake, Illinois and Walworth, Wisconsin (Decision issued on September 7, 1973 by Interstate Commerce Commission in Finance Docket No. 27345). The City of Chicago has filed its Protest (copy enclosed) to the current discontinuance application of the Milwaukee Road and intends to participate in the investigation and public hearings which should be scheduled sometime in November of this year.

We are enclosing a copy of the Report and Order of the Interstate Commerce Commission in Finance Docket No. 27345 for your reference and consideration. Particular attention should be directed to pages 7 and 8 of said Report and Order. As you will note, the Milwaukee Road alleged a savings of \$15,911 in the year 1972 upon discontinuance of the Wisconsin operation of these passenger trains. The Interstate Commerce Commission found that the discontinuance of the Wisconsin service would result in no savings to the Milwaukee Road but, in fact, would increase the operating deficit from the said \$15,911 to \$19,665. This anomaly occurs due to the fact that the revenues lost, upon discontinuance of the Wisconsin operation, exceed the expenses to be saved upon discontinuance; "... the carrier's figures, as modified above, indicate that the expenses to be saved under the proposed discontinuance would be less than revenues currently derived from the Fox Lake-Walworth service." (Page 8, remaining paragraph 1).

It is our opinion that the conclusion of the Interstate Commerce Commission in its previous Report and Order will pertain to the Milwaukee Road's current discontinuance proposal between Solon Mills and Walworth. Therefore, the discontinuance of the Milwaukee Road commuter passenger service between Solon Mills and Walworth will, if authorized, result in increased Illinois intrastate operating deficits and conversely greater potential operating subsidies of this service by the RTA.

Should you and other members of the RTA desire to explore this matter further, the writer will be available at your request.

SIDEWALK CONSTRUCTION WITHIN RAILROAD RIGHT-OF-WAY

*(Commissioner, Department of Streets and Sanitation—
B. R.—February 6, 1976)*

We are in receipt of your communication and the attached letter of Mr. Harry Stern, Chief Railroad Engineer of the Illinois Commerce Commission concerning the pedestrian crossing over the Chicago and North Western Transportation Company's tracks at Bryn Mawr and Avondale Streets. An inspection by the Staff of the Commission revealed that a paved sidewalk exists which ends approximately sixty feet on either side of the railroad crossing proper. The unpaved portion of said sidewalk is within the Railroad's right-of-way and Mr. Stern suggests that the City perform the actual work of installing a sidewalk at this location.

We have reviewed the Public Utilities Act (Chap. 111 2/3, Ill. Rev. Stat. 1973) and General Order No. 138, Revised and it is our legal opinion that the City of Chicago has no legal obligation to install said sidewalk. Should North Western agree to compensate the City for the installation of the sidewalk then it would be the decision of the Department of Streets and Sanitation as to whether the sidewalk should be installed under that circumstance.

ILLINOIS CENTRAL RAILROAD FARE INCREASE

(L. H. L.—B. R.—March 29, 1976)

We are in receipt of your letter of March 18, 1976 concerning the captioned matter. As you are aware, the City of Chicago opposed the Illinois Central fare increase as presented to the Interstate Commerce Commission. It is our opinion that the fares, as approved by the Commission, will force thousands of Illinois Central commuters to abandon the Railroad and to seek alternative modes of transportation. This is especially true in those areas where the private automobile and competing public transportation are acceptable alternatives.

It is the policy of this Administration under the leadership of our Mayor, Honorable Richard J. Daley, to encourage the use of public transportation rather than the reliance upon the private automobile. Therefore the City of Chicago opposes any and all action which could lead to the curtailment or abandonment of public transportation.

We agree with the sentiments that you express in your letter of March 18, 1976 which was addressed to Mr. Edward D. Greenberg, Regional Counsel of the Interstate Commerce Commission. Kindly be assured that the City of Chicago will pursue every legal avenue available for the purpose of preventing the implementation of the fare increase which was granted to the Illinois Central Gulf Railroad Company.

POSTING OF RAILROAD HEIGHT CLEARANCE SIGNS

*(Acting Commissioner, Department of Streets and
Sanitation—B. R.—May 17, 1976)*

You have inquired whether the City of Chicago is legally obligated to post vertical height clearance signs upon railroad structures located within the City. On August 22, 1973 the Illinois Commerce Commission issued its General Order 188, Revised, containing a new Rule 606. Said Rule required local highway authorities to install vertical height clearance signs upon railroad structures having clearances of less than 14 feet 6 inches. Rule 606 was to apply prospectively, e.g. those constructed after August 22, 1973.

The City, through this office, sought to have Rule 606 declared null and void in a Declaratory Judgment action before the Circuit Court of Cook County, *City of Chicago v. Illinois Commerce Commission*, No. 74L 15457. On August 14, 1975 Honorable Judge Arthur L. Dunne ruled in favor of the City. The Judge held that the Illinois Commerce Commission was without jurisdiction to promulgate and enforce its Rule 606. This decision is now final since the Illinois Commerce Commission failed to seek appellate review of same.

At the present time, the status of the law does not require the City of Chicago to post vertical height clearance signs upon railroad structures. The posting of said signs without the consent of the owner railroad would constitute an unlawful trespass. Even if the involved railroad should authorize the posting of signs upon its structure, the writer would advise against said posting by the City.

Action by a negligent volunteer, which results in property damage and/or personal injuries to a party free of contributory negligence, is subject to civil redress by the courts. Therefore, the voluntary posting of vertical height clearance signs by the City upon railroad structures would make Chicago vulnerable to lawsuits for civil damages.

Based upon the foregoing, it is our legal opinion that the City of Chicago should not post vertical height clearance signs upon railroad structures.

VERTICAL HEIGHT CLEARANCE SIGNS— RAILROAD UNDERPASS

(E. C. O., Attorney—B. R.—June 23, 1978)

This Office is in receipt of a Complaint from the Goodman Equipment Corporation concerning a potential hazard at your underpass at 49th and Halsted Streets in the City of Chicago. We have been advised that your structure does not contain vertical height clearance signs in which to inform truckers as to clearances. It is our understanding that within the past two years an exceptionally large number of trucks have sustained property damage when the top of their trailers has struck or has become jammed underneath your underpass.

Section 32 of the Public Utilities Act of the State of Illinois (Chap. 111 2/3, Ill. Rev. Stat., 1977) requires railroads, among other utilities, to maintain their property and facilities in such a condition as to promote the safety to railroad employees and to the general public. Further, on March 23, 1978 Honorable Judge Arthur L. Dunne of the Circuit Court of Cook County ruled that the Railroads should post vertical height clearance signs upon their structures when public safety so requires, *City of Chicago v. Illinois Commerce Commission* No. 74L 15457.

We would therefore request that the Grand Trunk take remedial action with respect to its 49th Street and Halsted Street underpass.

STAY OF RAILROAD SERVICE DISCONTINUATION ORDER

(M. A. P.—B. R.—December 6, 1978)

Your letter addressed to Honorable Michael A. Bilandic, Mayor of the City of Chicago, has been referred to the writer for reply. Kindly be advised that it is the policy of the City of Chicago to oppose curtailment of public transportation systems.

The City, through this office, successfully opposed the discontinuance of the captioned passenger trains before the Illinois Commerce Commission. We also participated as a protestant to the same discontinuance before the Interstate Commerce Commission. The Interstate Commerce Commission approved the discontinuance of these passenger trains and the City filed for and received a stay from the enforcement of said discontinuance order.

This office intends to exhaust every legal avenue which is available to us in our continuing effort to preserve the rail passenger service between Chicago and Peoria and Rock Island, Illinois.

CITY MAINTENANCE OF HEIGHT CLEARANCE SIGNS—RAILROAD UNDERPASS

*(Commissioner, Department of Streets and
Sanitation—B. R.—May 3, 1979)*

In response to your inquiry concerning the City of Chicago's obligation to post vertical height clearance signs upon Railroad underpasses within the City, kindly be advised that the Illinois Appellate Court First Division issued an Opinion on April 9, 1979 in which it held that the Illinois Commerce Commission had jurisdiction to promulgate and enforce its Rule 606 of General Order 138 Revised (copy of Opinion attached). This decision reverses a lower Court Opinion which ruled to the contrary.

Rule 606 of General Order 138 Revised obligates the City of Chicago to post vertical height clearance signs on Railroad underpasses within the City if said underpasses have a vertical clearance of less than 14 feet 6 inches. The City is required to furnish, install, maintain and replace said signs at its sole expense.

Rule 606 of General Order 138 Revised is to be applied on a *prospective* and not on a retroactive basis. The Rule was revised on August 22, 1973 and therefore is applicable to underpasses of less than 14 feet 6 inches which were constructed or undergoing construction on or after that date.

To my knowledge only a very limited number of Railroad underpasses were undergoing construction or were constructed on or after August 22, 1973. Further, it is my understanding that the said limited number of structures have vertical clearances of over 14 feet 6 inches. This fact can be verified by contacting the Department of Public Works.

Kindly be informed that the Appeals Division of the Corporation Counsel's Office is considering an appeal to the Illinois Supreme Court from the decision of the Appellate Court in this matter.

Section B. CHICAGO TRANSIT AUTHORITY

DRIVEWAY PERMIT EXEMPTION FOR CTA

(City Comptroller—W. M. Z.—July 8, 1975)

We are enclosing herewith unpaid Warrants (June, 1975) for collection which were forwarded and charged to the Chicago Transit Authority.

It is our opinion that the Chicago Transit Authority is exempt from paying for driveway permits. Therefore, it is our further opinion that these warrants should be cancelled and deleted from your records.

Section C. OTHER PUBLIC UTILITIES

UTILITY ACQUISITION OF UNDERGROUND
ELECTRIC DISTRIBUTION SYSTEM

*(Director of Real Estate, Department of Finance—
B. R.—September 23, 1974)*

We are in receipt of your letter of September 12, 1974 concerning the captioned matter. You inquire whether the University of Chicago or Edison is responsible for payment of the Warrants relating to conduits and tunnels located beneath the public way.

On June 10, 1948 a Franchise Ordinance became effective between Edison and the City of Chicago. Said Franchise, still in effect, provides in Section 2:

"The right, permission and authority are hereby granted to Commonwealth Edison Company, an Illinois corporation, herein sometimes called Licensee, for the term hereof, and subject to and upon all of the conditions of this ordinance to Provide Electric Energy to consumers thereof within the City and to acquire, construct, lease, maintain, operate and remove its Utility Facilities in, upon, along, across, over and under Public Ways or Property, as herein defined."

Edison is to compensate the City for its rights, privileges and licenses under the Franchise at a sum equal to four percent of its gross receipts realized from the distribution of electricity within Chicago.

The transfer of the University of Chicago distribution system to Edison will provide substantial additional sums of revenue to the Company which will in turn be subject to both the four percent Franchise license fee and to the four percent municipal utility tax. It is the writer's legal opinion that Warrants to the University of Chicago for both the conduits and tunnels should be cancelled.

Edison has, in the past, received operating rights in the City's tunnel systems by Ordinances passed by our City Council. Some of the said Ordinances provide for compensation to Chicago by Edison and others do not. The decision of whether to negotiate a new and separate Ordinance Agreement between the City and Edison for the conduits and tunnels which were previously the responsibility of the University of Chicago is a policy matter which should be referred to appropriate City officials.

LIABILITY FOR CIVIL DAMAGE CLAIMS—
PUBLIC UTILITIES

(Chicago resident—R. L. C.—October 29, 1974)

You have requested certain information concerning franchise agreements between the City of Chicago and privately owned public utilities and also whether the City is protected from civil damage claims arising from utilities making open cuts in City streets for purposes of utility repair or extension work.

The City has franchise ordinances with Illinois Bell Telephone Company and Commonwealth Edison Company. Peoples Gas Light and Coke Company has a State of Illinois Charter to operate within Chicago and Western Union Telegraph Company operates pursuant to a Federal Franchise granted under the Post Roads Act of July 24, 1866. We are attaching hereto copies of the said franchise ordinances and the State of Illinois Charter.

Your inquiry concerning personal injuries and property damage claims resulting from open cuts in the public way made by public utilities is answered by the following:

a. *Illinois Bell*—Sections 5 and 6 of the franchise ordinance of July 20, 1931 are applicable. Section 6 contains a general indemnification and save harmless clause flowing from the Company to the City.

b. *Commonwealth Edison*—Section 4.4 (a) and (b) of the franchise ordinance effective June 10, 1948 is applicable. Said Section contains a general indemnification clause flowing from the Company to the City.

c. *Peoples Gas*—The State Charter passed on February 12, 1855 and the accompanying City Common Council Ordinance of August 30, 1858 are applicable. As you will note, in Section 1 of the State Charter, consent is required of Chicago's Common Council for Peoples Gas to operate in the City. In giving said consent, the Common Council provided, in Section 1 of the ordinance of August 30, 1858, for a general liability clause for Peoples Gas.

d. *Western Union*—The Post Roads Act of July 24, 1866 does not cover this subject. However, case law imposes responsibility upon the utility for its negligent conduct. Also, Western Union leases its underground facilities from Illinois Bell, and it is my understanding that Western Union has not made an open cut in the City's public way in the last twenty years. With the new Microwave technology of transmitting messages, it is unlikely that Western Union will require new or expansion of existing underground facilities.

I believe that my foregoing response has answered your inquiries. Should you have any questions concerning the same, feel free to contact me accordingly.

INTERVENTION IN PUBLIC UTILITY RATE CASES

(W. A. G.—B. R.—March 3, 1976)

In response to your inquiry, kindly be advised that the City of Chicago as a matter of policy intervenes in every rate case filed by public utilities which serve our City. The formal pleading of intervention must be approved by my superior, William R. Quinlan, Corporation Counsel of the City of Chicago.

Chicago's intervention in these cases can be termed successful since, in our opinion, the rates ultimately approved by the regulatory agency fall within the range of reasonableness which may not have occurred without Chicago's participation in the proceeding. Our expenses associated with our participation in the rate proceeding will vary depending upon whether or not we believe it is necessary to employ expert witnesses to testify before the regulatory agency.

LIABILITY FOR EXPENSES OF GAS LINE RELOCATION

*(Commissioner, Department of Public Works—
B. R.—March 6, 1978)*

Your letter of March 3, 1978 addressed to the Corporation Counsel, William R. Quinlan, has been referred to the writer for reply. In your letter you request a legal opinion as to whether the People's Gas Light and Coke Company is required to relocate its two inch high pressure gas line at its own expense to make way for a new addition to the North Fire Station at O'Hare Field.

Unlike Illinois Bell Telephone Company and Commonwealth Edison Company, Peoples Gas does not have a franchise from the City to operate within Chicago. Peoples Gas has a State of Illinois Charter for such operation which includes City Council authorization. However, the issue which you raise in your letter of March 3 was specifically addressed by the Illinois Supreme Court

In the *Peoples Light and Coke Company v. City of Chicago* 413 Ill. 457, 474 (1952) the question arose whether Peoples Gas had to relocate its facilities at its own expense due to the construction of the downtown area subway. The Illinois Supreme Court held that the Gas Company was required to make said relocation at its own expense:

"Under its Franchise Ordinance Appellant was, in the maintenance of its structures, subject at all times to the resolutions and ordinances of the common council of the city of Chicago. It had no vested right to have its facilities remain where they were. In connection with the construction of the subway, appellant was required to, and did, relocate its mains and fixtures. No complaint is made that the City failed to provide other suitable locations for those facilities or that property of appellant was taken or its value depreciated. The only injury suffered by appellant in connection with the construction was the cost of removal and relocation, and that, in the words of the Supreme Court of the United States, is 'damnum absque injuria.' We conclude that no constitutional right of appellant has been infringed or impaired and that the ordinance in question was not unconstitutional for the reasons assigned."

Based upon the foregoing decision of the Illinois Supreme Court, it is the writer's legal opinion that the Peoples Light and Coke Company must relocate its gas service lines for the construction of the North Fire Station at Chicago-O'Hare International Airport, at its own expense.

RECORDS OF REPORTS BY UTILITIES TO CITY

*(Director, Mayor's Office of Inquiry and Information
—B. R.—August 1, 1978)*

Your letter of July 27, 1978 addressed to the Corporation Counsel, William R. Quinlan, has been referred to the writer for reply. You inquire whether the reports submitted to City Agencies by Peoples Gas in accordance with Public Act #80-953 (Chap. 111 2/3, Ill. Rev. Stat., Section 32.1(b), 1977)

may be in the form of a "micro-fish document." Since the said Act does not prescribe the form of the aforesaid reports, it is our opinion that the proposal of Peoples Gas in this regard complies with applicable State law and may be accepted by the appropriate City Agencies.

You further inquire as to the length of time that City Agencies are required to hold these reports. Public Act #80-953 is silent on this subject. However, since the reports constitute public records their maintenance would be governed by Chapter 116 of the Illinois Revised Statutes. Section 43.107 of Chapter 116 provides that "Except as otherwise provided by law, no public record shall be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained." In this regard we would also refer you to Sections 43.106 and 47.1 of Chapter 116.

CHAPTER IX—PUBLIC WAYS

Section A. DEDICATION AND VARIATION

LEGISLATIVE APPROVAL FOR VACATION ORDINANCE

(Alderman—R. L. C.—January 22, 1974)

Your recent letter concerns the procedure involved in the introduction of ordinances for the vacation of streets and alleys. You note, quite properly, that the present procedure requires support for such a proposition by an alderman and introduction of the same by him before any action is taken either by the Council or by the City departments. You suggest that the procedures involved should permit an individual citizen to introduce such a matter through the City Clerk.

The justification for the current procedure can be sustained, I believe, (1) on an economic basis, and (2) on the recognition that no right exists to compel consideration of the sale of public land and that the sale of public land is not analogous to other issues of legislative action.

1. The procedure currently employed in vacation ordinances is for the Law Department to secure two independent appraisals of the street or alley sought to be vacated. These appraisals are then reviewed by the Real Estate Review Board so that a recommended dollar value may be supplied to the Council Committee based on appraisal considerations as directed by law. You are aware that the quality of appraisers used for this work is of the highest caliber. Their fees, therefore, are commensurate with the service they render and the prestige and the reputation which they bring to the assignment. It seems only appropriate, in keeping with the prudent management of City funds, that no such undertaking be started without *at least* the support of one member of the legislative body before whom the matter will ultimately be resolved. If the proposed vacation is so lacking in merit or feasibility that no single member of the Council will facilitate its introduction, then I believe it appropriate that this matter not be given the appearance of legitimacy by the expenditure of public funds.

2. Whereas it can be validly argued that each citizen should be presented with the avenue by which he may cause to be introduced legislation of his choice, I believe that no such similar right attaches to matters concerning disposition of City-owned property. Streets, alleys and public buildings are owned by local government for the use and enjoyment of the public, and the orderly management of government implies continued beneficial enjoyment of these properties. It is unreasonable to urge upon the legislative body consideration of a proposal to the contrary in the absence of the support of even a single member of that body.

Under the procedures which you envision, this office, and indeed the body in which you serve, would be required to treat as serious, matters which are clearly frivolous and not in the best interest of the public; i.e., vacation of State Street, Michigan Avenue, or the sale of the Chicago Water Tower, City Hall, etc.

For these reasons I believe that the procedure for the introduction of vacation ordinances without approval of a single member of the legislative body should be avoided.

PREFERENTIAL PUBLIC PARKING FOR CARPOOLS

*(Acting Commissioner of Public Works—
M. L. R.—March 22, 1974)*

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding the legality of establishing preferential parking arrangements for persons driving in carpools, who park their vehicles in licensed parking facilities in the City of Chicago. You state that this could be accomplished either by granting such people reductions in parking rates, or by reserving the most desirable parking spaces for them in the facilities available to the public.

The term "public garage" is defined in Chapter 156 of the Municipal Code of Chicago (Motor Vehicle Storage, Repair and Sales) at Section 156-13 as follows:

"... any building, structure, premises, enclosure, or other place, except a public way, within the city, where two or more motor vehicles are stored, housed, or parked for hire, in a condition ready for use, or where rent or compensation is paid to the owner, manager or lessee of the premises for the housing, storing, sheltering, keeping, or maintaining of such motor vehicles. Provided, that nothing in this section shall be construed as applying to off-street parking of passenger vehicles with seating capacity of not more than seven passengers on vacant property maintained for the accommodation of patrons or employees of business establishments or occupants of residential units, where such parking is permitted without supervision by paid attendants."

Chapter 156 further provides at Section 156-15 that "no person shall engage in the business of a public garage without having obtained a license therefor." The requirements for said license applicant are clearly specified in the Code.

You state that such a proposal giving preference in parking rates or spaces to individuals using carpools, raises the question of whether or not an arrangement of this nature would be discriminatory with respect to persons using public garages licensed by the City of Chicago, who choose not to participate in carpool systems. It is our opinion that any plan along these lines would clearly be violative of the Equal Protection Clause of the Constitution of the State of Illinois (Article I, Section 2).

VACATION OF STREETS FOR PUBLIC BODIES

*(Chairman, City Council Committee on Local Industrial
Streets and Alleys—D. P.—October 22, 1975)*

The Board of Trustees of the University of Illinois has applied to the City for the vacation of certain streets within the perimeter of property owned by it.

The question has been raised as to the obligation of the applicant to pay compensation to the City of Chicago for said vacation.

The authority to vacate streets and alleys by a municipality, and to require compensation therefor from the abutting owners, is found in Chapter 24 of Illinois Revised Statutes, Par. 11-91-1. Said section reads in part, as follows:

"Whenever the corporate authorities . . . determine that the public interest will be subserved by vacating any street or alley . . . they may vacate that street or alley or part thereof by ordinance.

....

The ordinance may provide that it shall not become effective until the owners of property abutting . . . shall pay compensation in an amount which, in the judgment of the corporate authorities, shall be equal to the benefits which will accrue to them by reason of the vacation. . . .

....

The determination of the corporate authorities . . . is conclusive. . . .'

....

It is patent from the language of said statute that the requirement that compensation be paid, is permissive and that the major requirement is that such vacation be in the public interest.

Based upon the authority provided in said statute, the City Council of the City of Chicago adopted an ordinance on July 11, 1968 which provided in essence that no compensation shall be paid to the City of Chicago for the vacation of streets and alleys when the owners of the abutting property are the United States, the State of Illinois, the County of Cook, or any political or municipal subdivision, agency, or instrumentality of any of them.

The Board of Trustees of the University of Illinois is a public body corporate and politic of the State of Illinois, created by the State Legislature and within the intent of said ordinance.

In view of said statute, and enabling ordinance, it is the opinion of this office that there is no compensation due the City for the vacation of streets and alleys abutting the University of Illinois property when the City Counsel determines that the public interest will be subserved. However, it should be pointed out that the statute also provides that the corporate authorities may reserve such easements in said streets or alleys to be vacated as are required for City or public utilities.

It is the practice of the City to require reimbursement for the relocation or adjustment of utilities and rebuilding of curbs and gutters necessitated by the vacation. These are the actual expenses incurred, or that will be incurred and should be borne by the applicant.

ECONOMIC DISCLOSURE PREREQUISITE TO VACATION ORDINANCE

(J. N.—E. L. N.—June 28, 1976)

Our office is in receipt of the above referenced proposed vacation and dedication. Concerning the application for the vacation of the above referenced alleys, we are enclosing four copies of a form entitled "Economic Disclosure Statement."

In order to process this matter it is necessary that you complete the information that is relevant to the ownership of the applicant, have the same properly executed and sworn to and return three copies to this office.

Where a corporation has more than 100 stockholders the holders of more than 3% of the stock should be shown. However, in view of the fact that your Company is listed on the Stock Exchange, in lieu of listing the stockholders owning more than 3% of the stock in the Economic Disclosure Statement you may submit your latest report to the SEC or other governmental agency which discloses said information. The Economic Disclosure statement should be signed to indicate full disclosure has been made.

We should also be furnished with an affidavit showing the legal description of the property adjoining the proposed vacation owned by the applicant, date property was purchased and the purchase price paid therefor.

Upon receipt of the foregoing information we will proceed with the preliminary steps necessary before presentation of the vacation ordinance to the City Council.

Section B. USE OF STREETS, ALLEYS AND SIDEWALKS

REGULATION OF LARGE COMBUSTION BOILER

*(Acting Commissioner, Department of Water and
Sewers—R. L. C.—July 27, 1973)*

Your letter of June 21, 1973 asks that the Law Department outline a course of conduct for you to follow in regards to the Illinois Pollution Board's regulations requiring operating permits for large combustion boilers under your control.

Until such time as the respective, and currently competing, roles of the City and State regarding matters of air and water quality are more clearly defined. I would advise that your Department continue to cooperate with the Chicago Department of Environmental Control. Long term experience of that Department in this area, together with its primary concern for the well-being of the City, make it uniquely suited to keep you advised in matters relating to large combustion boilers. Any attempt by a State agency to superimpose its authorities over those of the Commissioner of Environmental Control should be brought to the attention of the Law Department immediately.

USE OF UNDERGROUND CONDUIT

*(Commissioner, Department of Streets and Sanitation—
W. R. Q.—August 28, 1973)*

The purpose of this letter is to respond to your inquiry of June 13, 1973, regarding the position taken by the general solicitor of the Illinois Bell Telephone Company. Section 8 of the Franchise Agreement between the City and Illinois Bell provides that the Company will provide the City, free of charge, the use of underground conduits for the "police and fire alarm systems

of the City." The general solicitor has opined that the multi-communications (noise and video) system does not fall within the phrase quoted above and that the Police Department cannot install a multi-use communication cable in the duct system of Illinois Bell under the terms of the Franchise Agreement. If such a cable is installed, he proposes a "cost of service charge."

It is the position of this office that the term "police and fire alarm systems" encompasses a multi-use communications system. The agreement fails to define "alarm systems;" the phrase is subject to various interpretations. In resolving any ambiguity, it is necessary to examine the circumstances surrounding the drafting of section 8. The duration of the agreement, approved in July of 1931, was 23 years and thereafter until either party decided to cancel the agreement. Both parties to the contract were aware that the franchise was potentially of perpetual duration. They were aware also of the rapid developments in the communications industry resulting in increasingly sophisticated communication devices. The fact that the parties did not define "alarm systems" indicates they did not intend to confine the agreement to the state of the art in 1931 and did not intend a particular type of alarm system.

Moreover, the purpose of the parties in drafting section 8 is instructive in an attempt to construe the phrase in question. The preamble to section 8 provides that the grant by Bell is consideration and compensation to the City for the valuable rights given Bell by the franchise. In addition to the use of underground conduits, the section also contains broad grants of free telephone service to the City. Nothing in the entire section reflects any intent to construe the rights of the city restrictively.

Finally, it is valuable to look to the practical construction the parties have already given "police and fire alarm systems" previous to this current difference in interpretation. For a number of years, the Police Department has utilized a security communications (PAX) system. Bell and the City have interpreted the phrase "police alarm system" as covering the PAX audio communication system. If a sophisticated audio communications system has been interpreted as falling within the ambit of section 8, the added feature of the new system, video transmission, should not be fatal to its qualifying under the terms of the franchise as well.

Accordingly, there is nothing in the entire agreement which prohibits the installation of a multi-use cable and such installation is a necessary part of a modern police alarm system. As a result, no charge should be made for messages transmitted by the multi-use cable. Illinois Bell Telephone should be notified that the City will treat imposition of any service charge as a breach of Illinois Bell Telephone's obligation under section 8 of the Franchise.

APPROVED FOR BRIDGE CONSTRUCTION OVER STREET

*(Executive Director, Committee for Economic and Cultural
Development of Chicago—R. L. C.—September 4, 1973)*

Your letter of August 24, 1973 requests our assistance in securing approval for the construction of a connected bridge across Wellington Avenue to assist the Garden City Envelope Company in its plant expansion.

Approval for construction over the public way can only be granted by the City Council and the Council is guided in its determination by an ap-

praisal secured by the City real estate agent setting forth adequate compensation for such a privilege.

I have taken the liberty of forwarding your communication to the City real estate agent so that they may begin to secure the necessary information to arrive at a proper compensation for this privilege.

INSTALLATION OF FLAGPOLE OVER PUBLIC WAY

*(Acting City Comptroller—W. M. Z.—
January 30, 1974)*

Please refer to a letter from your office, dated November 5, 1973, which, in part reads as follows:

"We have received a letter from Mr. John A. Iacopi requesting authority to install two (2) outrigger flagpoles on the North elevation of the 325 West Ohio Street Building. His letter of request is herewith attached.

"At this time, we will appreciate receiving a legal opinion with regards to the installation of these devices over this public way or any other public way in the City."

It is our opinion that the information you desire is contained in the Municipal Code of Chicago, Section 61-19.1 which is as follows:

61-19.1 It shall be the duty of the owner, agent or person in charge, possession or control of any building upon which or above which any exposed metal structure, including tank and sign structures, canopies, marquees, fire escapes, flag poles, metal cornices, and smoke stacks are now located or which may be erected, to maintain such structures in a good and safe condition. Any exposed tank of larger than two hundred fifty gallons shall have a rust-proof plate or tag attached to such tank or its supports, which tag shall show in letters or figures at least two inches high, the year and month in which the tank and its supports were installed."

We also wish to call to your attention that the Commissioner of Buildings shall issue the necessary permits and make inspections of the building as provided for in the Municipal Code of Chicago, Section 61-19.2.

VERTICAL CLEARANCE SIGNS ON RAILROAD STRUCTURE

*(Commissioner, Department of Streets and Sanitation—
B. R.—February 19, 1974)*

Your letter of February 8, 1974 addressed to the Corporation Counsel, Richard L. Curry, has been referred to the writers for reply. You inquire whether the City of Chicago is legally obligated to comply with Rule 606 of General Order 138 of the Illinois Commerce Commission as revised on August 22, 1973.

The Illinois Commerce Commission derives its power from the Public Utilities Act (Chap. 111 2/3, Ill. Rev. Stat., 1971) and has no authority except that which is expressly conferred on it by said Act. *Blackhawk Motor Transit Company vs. Illinois Commerce Commission* 398 Ill. 542 (1948) After a thorough review of the appropriate Sections of the Public Utilities Act, it is the writer's legal opinion that the Illinois Commerce Commission does not have authority or power to impose upon the City of Chicago the obligation of furnishing, installing, maintaining and replacing, at its sole expense, vertical signs for railroad structures.

On March 6, 7 and 8, 1974 the writer shall attend hearings in Springfield concerning another subject matter. During that time, I shall meet with Mr. Harry Stern, Chief Railroad Engineer of the Commission for the purpose of discussing Rule 606. It is my recommendation that the Department of Streets and Sanitation take no action or embark upon any program and procedure to implement Rule 606 of General Order 138 Revised until such time as this Office receives clarification relative to this controversy.

We shall keep you advised as to the status of this cause.

LIABILITY FOR EXPENSE OF REMOVING STREETCAR TRACKS

*(Commissioner, Department of Streets and Sanitation—
H. S.—March 8, 1974)*

Please refer to your letter of June 8, 1973 with reference to the above entitled matter wherein you requested an opinion as to whether the present owner or the City of Chicago is liable for the expense of the above changes.

In your letter you state the following:

"1700 West Cortland was at one time the site of a Chicago Surface Lines streetcar barn and the pavement was constructed without curbs to permit ingress and egress of streetcars and other vehicular equipment. In fact, some of the tracks leading into the site are still in the public way and would have to be removed in order to construct the curb and drainage structures.

In view of the fact that the street was constructed in this manner for the convenience of the Chicago Surface Lines and was essentially a driveway, it is this Department's feeling that the expense of restoration falls upon the property owner."

We consulted the provisions of Chapter 33 of the Municipal Code, "Work On and Under Public Ways" and also obtained a copy of the deed from the Chicago Transit Authority conveying the property at the above site to the grantors of the present owner, but found nothing in the deed to indicate anything about the question at hand.

We agree with you and are of the opinion that the changes sought have to be made by the present owner, at its expense, subject to the provisions of Chapter 33 mentioned above, and transmit a copy of the pertinent provisions thereof to be given to the Inmont Corporation, present owner, in the event it is not familiar with the provisions of said Chapter 33.

VERTICAL CLEARANCE SIGNS ON RAILROAD UNDERPASSES

(Commissioner, Department of Streets and Sanitation—
B. R.—April 29, 1974)

On April 24, 1974 a meeting was conducted in Springfield, Illinois in the office of Mr. Harry Stern, Chief Railroad Engineer of the Illinois Commerce Commission. In attendance at the meeting were Mr. Stern, Mr. Charles Smith, Illinois Department of Transportation, Mr. William Bablitz, City's Bureau of Street Traffic, and the writer.

Mr. Smith did not appear with Counsel, however he asserted that Chicago is obligated to post vertical clearance signs on railroad underpasses by virtue of the Illinois Vehicle Code (Chap. 95 1/2, Ill. Rev. Stat., 1973) and the State of Illinois Manual of Uniform Traffic Control Devices for Streets and Highways. A reading of the Manual indicates that local authorities shall place and maintain traffic control devices upon *highways* under their maintenance jurisdiction. Mr. Smith has interpreted the definition of "highway," under Section 1-126 of the Illinois Vehicle Code, to embrace railroad structures over public ways.

Section 1-126 reads as follows: "Highway." "The entire width between the boundary lines of every way *publicly maintained* when any part thereof is open to the use of the public for purposes of vehicular travel." It is the writer's opinion that Section 1-126 does not encompass railroad underpasses. Railroad structures, be they underpasses, viaducts or crossings at grade, are not publicly maintained. Sections 32 and 57 of the Public Utilities Act (Chap. 111 2/3, Ill. Rev. Stat., 1973) specifically obligate railroads to maintain their plant, equipment and facilities in such a manner as to promote public safety. In its Order in Docket No. 52161, the Illinois Commerce Commission held that the safety of railroad underpasses was within the jurisdiction of the Commission and it therefore directed the installation of improved illumination within the structures. Also, it should be noted that the physical entity of a railroad underpass is limited to railroad movements on the top of the structure. The structure is not "open to the use of the public for purposes of vehicular travel" as the words appear in Section 1-126.

A recent decision by the Illinois Appellate Court reenforces our legal opinion that Rule 606 of General Order 138 is invalid and unenforceable against the City of Chicago. In this case, a truck driver sued the City for injuries sustained in an accident which occurred when his truck struck a beam on an overhead structure (a street over a street); the plaintiff claimed that the City was negligent for failing to place lights and warning devices or low clearance signs on the structure. The Court ruled that the City was not obligated to place such warning devices on the structure (citing the Local Governmental and Governmental Employees Tort Immunity Act, Ill. Rev. Stat. 1967, Ch. 85, Section 3-104). *Robert Herman vs. City of Chicago* 16 Ill. App. 3d 696, 700 (December 26, 1973).

The posting of advance vertical clearance warning signs is within the purview of the local highway authority and not the Illinois Commerce Commission. In our opinion, the posting of said signs should be conditioned upon the railroads placing vertical clearance signs upon their structures in compliance with the Manual.

In light of the foregoing, we would advise against the City's posting vertical

clearance signs upon railroad underpasses at this time. We shall be in communication with attorneys of the Commission relative to Rule 606 of General Order 138 and will keep you abreast of this matter.

PERMISSION TO PARK TRAINS BLOCKING STREET

*(Commissioner, Department of Streets and Sanitation
R. L. C.—May 31, 1974)*

Attached please find my recent letter to the attorneys for the Norfolk & Western Railroad regarding procedures to be followed in obtaining formal permission to park commuter trains in such a fashion in the Polk Street Station as would extend them past Taylor Street.

In addition to my letter, I supply herewith a letter from the Fire Department indicating no objection, a letter from your Department indicating no objection, and a letter from the Illinois Commerce Commission urging this action.

You should also note that both Congressman Annunzio and Congressman Derwinski have contacted the undersigned to urge cooperation in this venture.

TRANSIT STATION ACCESSIBILITY— ELDERLY AND HANDICAPPED

*(Commissioner, Department of Development and
Planning—E. H.—July 16, 1974)*

Your letter of May 10, 1974, addressed to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to me for consideration and reply.

The question you put to us is whether, in view of the redefinition of the term, Public Building, embodied in Section 47-2 of the Municipal Code of Chicago, the many new provisions enacted by the City Council for the protection of the elderly and the handicapped are now applicable to "subway and above ground rapid transit stations."

Our conclusion is that these protective measures are applicable to subway and elevated stations. These structures plainly are buildings "to which the general public has access." Chapter 48 of the Municipal Code of Chicago governs the classification of buildings by occupancy and Section 48-4 thereof lists "passenger stations" as Class A Assembly Units, that is, buildings "designed or used for the assembly of persons."

That judgment is further fortified by Section 66-5.11 of the Municipal Code of Chicago, a recently enacted ordinance prohibiting the charging of any sum of money for the use of a toilet facility in "any building that is open to accommodate or serve the public." That ordinance includes bus stations and terminals and railroad stations and terminals in the long list of uses that are buildings "open to accommodate and serve the public."

The extent to which a transit station may be considered by the courts to be a public building is graphically indicated by *Wolin vs. Port of New York Authority*, 392 F.2d 83 (3 Cir., 1968). There the United States Court of Appeals for the Third Circuit enjoined interference with antiwar protest picketing in

the Port of New York Authority's bus terminal building in Manhattan. The Court found the New York terminal appropriate for use as a public forum and even directed that the protestors be permitted to set up tables in the terminal for their literature.

We trust that it will not be difficult to bring subway and elevated rapid transit stations into compliance with the provisions for protection of the elderly and handicapped. These appear to include requirements of one handicapped person's toilet stool for each sex per 500 occupants (§ 66-5.3), clear space for individuals in wheel chairs (§ 54-8.13), accessible drinking fountains (§ 66-5.7), risers on stairs not more than 7½ inches high (§ 67-10), accessible hand rails (§ 67-10.3), and practical ramps (§ 67-12) and entrances and vestibules (§ 67-9).

VERTICAL CLEARANCE SIGNS ON CTA ELEVATED STRUCTURES

*(Commissioner, Department of Streets and Sanitation—
B. R.—August 19, 1974)*

You have requested an opinion from this office whether Illinois Commerce Commission Rule 606 of General Order 138 Revised (August 23, 1973) imposes a legal responsibility on the City of Chicago to post vertical clearance height signs upon CTA elevated structures. As we asserted to you in our letter of April 29, 1974, it is our legal opinion that Rule 606 of General Order 138 Revised is invalid and is unenforceable against the City of Chicago. The said opinion related to the posting of said signs upon railroad underpasses.

Assuming *arguendo* the lawfulness of Rule 606 of General Order 138 Revised, the same would be inapplicable to CTA elevated structures since the Illinois Commerce Commission does not have jurisdiction over the CTA. *Fallon vs. Commerce Commission* 402 Ill. 516, 522 (1948). It is therefore the writer's opinion that the City of Chicago has no legal duty to post vertical clearance height signs upon CTA elevated structures.

AUTHORITY TO CHANGE STREET NAME

*(Chairman, City Council Committee on Local Industries,
Streets and Alleys—J. F. C.—September 12, 1974)*

We acknowledge the receipt of your letter of September 4, 1974, requesting our office to "review" the proposed ordinance enclosed with letter in which the service drive or roadway on the west side of the Calumet Expressway between the entrance ramp on the south side of E. 103rd Street and the exit ramp on the north side on E. 103rd Street be named S. Blackstone Avenue; also that the service drive or roadway on the east side of the Calumet Expressway between the entrance ramp on the north side of E. 103rd Street and the exit ramp on the south side of E. 103rd Street be named S. Harper Avenue.

Section 11-80-19 of the Municipal Code of Illinois (Ill. Rev. Stat. 1973, Ch. 24, Par. 11-80-19) states as follows:

"The corporate authorities of each municipality may name originally and then may change the name of any street, avenue, alley, or other public place."

It is, therefore, our opinion that the aforementioned name changes are correct as to form and legality.

OBLIGATION TO MAINTAIN PUBLIC SIDEWALKS—RETAIL STORE

(G. A. S., R. L. C.—October 10, 1974)

For many years Marshall Field & Company has enjoyed using the subsidewalk space as part of its retail store. This privilege includes an obligation to maintain the sidewalks over the vault space and to hold the City harmless from any claims on account of the condition or maintenance of the sidewalk. We call your attention to the two cases above. In each of these, although called upon to do so, your company has declined to defend the City or assume responsibility for the condition of the public sidewalk over the area utilized by you.

Your reluctance to meet your obligations in this regard raises a question of the propriety of your continued enjoyment of the use of this space for commercial purposes.

We ask you to restudy your position on this question. If you elect not to fulfill your obligations to assume the responsibility for maintaining the public sidewalks above this portion of your retail store, it would seem reasonable that you vacate the public property presently occupied by your store. I will await your reply.

WATER MAIN CROSSING RAILROAD

(Commissioner, Department of Water and Sewers—
H. S.—October 10, 1975)

In reply to your letter of October 2, 1975, with attached copies of all correspondence on the question of charges for permission to cross a railroad, we wish to advise you as follows:

We have considered the problem involved and are of the opinion that the City is not obliged to pay the \$100.00 processing fee and the \$25.00 annual fee, for the reason that it is well established law that when a city has the right to occupy a street for street purposes, whether acquired by dedication, deed, condemnation, easement or prescriptive right, it has the power and authority to install necessary utilities thereunder such as water mains and sewers, without reimbursement to any railroad that may cross said street.

However, in the instant case, the City has agreed to reimburse the Railway Company for any costs and expenses incurred by it because it is necessary, by agreement, to cut the tracks at the location of the installation of the water main.

The City acquired an easement in Lawndale Avenue under decree entered February 25, 1966 in Case No. 65-CH-6194, *City of Chicago vs. Belt Railway Co.* This right of the City as above outlined covers all street crossings within the city limits.

In support of our opinion we cite the following cases: In *City of Chicago vs. The Chicago City Railway Co.*, 324 Ill. Supreme p. 618, the court held, among other matters, a city may compel a street railway company to re-locate,

at its expense, its tracks in the interest of public safety. As street railways occupy public streets subject to the use of such streets by the public, and subject to such burdens as may be made necessary by reason of the improvement of the streets in the interest of public safety and convenience, a city may compel a railway company to re-locate its tracks in conformity with the widening of a street by the city, and such relocation of the tracks may be compelled by the city without resort to the exercise of the power of eminent domain.

In *Peoples Gas Light & Coke Co., vs. City of Chicago*, 413 Ill. Supreme, p. 457, the court held substantially that the statute does not require the city to share the cost of re-location of facilities because of a subway. In authorizing a city to require public utility companies owning structures in streets to remove or relocate them to permit construction of a subway in the streets, under the Subways and Tunnels Act, no provision is made that the city shall bear all or any part of the cost of such removal or re-location, and the city is not liable for such cost under the provisions of the act. The Court also found the same law to be applicable in the following citation: *Sears vs. City of Chicago*, 247 Ill. Supreme, p. 204.

We enclose herewith, for your perusal and reference, copies of prior opinions of this office relative to the subject matter herein involved.

NO EXCLUSIVE USE—LOADING PLATFORM

*(Commissioner, Department of Development and Planning
—H. A. T.—May 20, 1976)*

Recently you requested our opinion as to the exclusive use of the Loading Platform on the west side of Garland Court, between Randolph and Washington Streets.

We have reviewed various ordinances granting permission to adjacent owners to use the Loading Platform presently existing on the west side of Garland Court for a yearly consideration paid to the City. Said ordinances also require the named grantee to keep the portion of the public way adjacent thereto in good condition and repair, free from snow, ice and dirt to the satisfaction of the Commissioner of Streets and Sanitation.

You have requested our opinion as to whether said grants of privilege are exclusive or alternatively may an adjoining property owner be granted the right to share the use of this area for the same purpose.

There is nothing in the ordinance that we reviewed that says the privilege granted is for the exclusive use of the grantee. However, the ordinances do require the abutting owner to keep its portion of the dock and public way in good condition and repair. Does this requirement imply an exclusive use? To answer this question, we must resort to the general rules of construction of ordinances. The cardinal rule in construction is to give effect to the municipal legislative intent. The construction should require, keeping in mind the object sought to be accomplished, and to give practical effect thereof. Ordinances should be construed most liberally in favor of the best interests of the public. (McQuillan on Municipal Corporations, Vol. 6, Sec. 20.42 and following Sections).

Applying the above general precepts, we note that the Loading Platform is broken up into sections but extends continuously from the rear of 139 North

Wabash Avenue to the rear of 117 North Wabash Avenue, at varying levels. Patently, the loading Platform was built to service all said properties and is also a sidewalk area used by pedestrians.

This structure does not show any indications of exclusivity and is basically a raised sidewalk open to all. We conclude, therefore, that the City Council advisedly omitted any exclusive use of the privilege of the Loading Platform to the abutting owner and that the use of said sidewalk as a loading platform is a privilege which the City may grant to neighboring parcels contemporaneously and under such terms and conditions as it determines.

FEE FOR MAINTENANCE OF CANOPY OVER PUBLIC SIDEWALK

(City Comptroller—F. H. K.—April 20, 1977)

We acknowledge receipt of your letter of March 30, 1977, enclosing a letter from Action Line, Chicago Tribune and also two letters from Mrs. Mary Patricelli objecting to the annual charge to maintain a canopy over a public sidewalk.

The Illinois Municipal Code, Chapter 24, Section 11-80-13 (Ill. Rev. Stat 1975) gives the City Council power to regulate the use of sidewalks and all structures thereon.

In the exercise of this power the City Council has enacted the following sections of the Municipal Code:

Section 34-14 provides:

"It shall be unlawful for any person to erect, construct or maintain any canopy or marquee attached to any building or structure, which shall extend over any public way in the city, without first obtaining authority from the City Council and a permit from the superintendent of compensation to do so as hereinafter provided"

Section 34-17 provides:

"Every person erecting, locating, constructing or maintaining any canopy or marquee attached to any building or over any public way or other public place, shall pay annually in advance to the city as compensation for such privilege the sum of fifty dollars, the first payment to be made at the time of the issuance of said permit and each succeeding payment on the same day and month annually thereafter."

It is our opinion that the annual fee for maintaining a canopy over a public sidewalk is validly imposed.

We return herewith the three letters enclosed with your letter.

DEBRIS REMOVAL FROM STREET PARKWAYS

*(Chairman, Committee on Local Industrial Streets
and Alleys—H. A. T.—August 3, 1977)*

You have requested our opinion concerning the form and legality of the following proposed ordinance:

Section 1. That Chapter 36 of the Municipal Code of Chicago is hereby amended by inserting therein, in its proper numerical sequence, a new Section 36-20 to read as follows:

36-20. Every owner, lessee, tenant, occupant, or other person having charge of any building or lot of ground in the city abutting upon any street parkway shall remove all debris and litter from said parkway in front of such building or lot of ground; provided, however, that this regulation does not impose upon the authority granted the bureau of forestry, parkways and beautification in Section 14-23 of this Code.

Section 2. This ordinance shall be in full force and effect from and after its date of passage and due publications.

Although we are sympathetic to the purpose of such an ordinance, we are dubious of the legality of the same.

A line of cases going back to 1878 (*Gridley v. City of Bloomington*, 88 Ill. 554), decided that a municipality had no power to require an abutting owner to remove ice and snow from the sidewalk in front of his premises.

The Corporation Counsel's office, in two separate opinions, in Vol. 26 of *Opinions*, pages 222 and 391, pointed out the same conclusions. Further, the opinion on Page 391 stated that the Illinois Const. of 1970 giving a City Home Rule powers has not changed the basic law.

The case of the *City of Chicago vs. Union Traction Co.*, 199 Ill. 259, expresses the same idea as the parkways:

"The Courts have also held that the parkway between the street and sidewalk is generally regarded as part of the right-of-way which the City has an obligation to keep in reasonably safe condition."

It is our opinion that the Courts would find the proposed ordinance analogous to the ordinances requiring abutting owners to clear snow and ice and hold the same contrary to public policy.

I attach copies of the former opinions of the Corporation Counsel above referred to.

AUTHORITY TO ORDER REMOVAL OF UTILITY POLE LINE

(*Commissioner, Department of Public Works—B. R.—
November 21, 1977*)

Your letter of November 15, 1977 addressed to the Corporation Counsel, Mr. William R. Quinlan, has been referred to the writer for reply. You have requested an opinion from this office whether Commonwealth Edison Company is required, under the "Franchise Ordinance" to relocate its overhead pole line along 111th Street between Ellis and Corliss Avenues at its own expense.

Section 4.2(a) of the aforesaid "Franchise Ordinance" reads, in part, as follows:

"If, as and when required by law, ordinance or order of Competent Authority, within such reasonable time as therein shall be provided: [Licensee-Commonwealth Edison shall] Temporarily or permanently remove, change or alter the position of any Utility Facilities In Public Ways or Property when-

ever Chicago shall decide that such removal, change or alteration is reasonably necessary to the construction, repair, maintenance or use of such Public Ways or Property, or the location, construction, replacement or maintenance of other property therein, provided, however, that such construction, repair, maintenance or use of such Public Ways or Property, or the location, construction, replacement or maintenance of other property therein shall be carried out so as reasonably to minimize Licensee's expense in making the required removals, changes or alterations of Licensee's Utility Facilities; . . ." (Emphasis Supplied)

It is the writer's legal opinion that the Department of Public Works has the authority under the "Franchise Ordinance" to require Commonwealth Edison Company, at its sole expense, to remove and relocate its utility pole line from 111th Street and Ellis Avenue.

POWER TO BARRICADE STREET

(Commissioner, Department of Streets and Sanitation—
E. H.—December 9, 1977)

The question has been asked the Corporation Counsel by you whether the City has the power to erect a barricade across Newark Avenue at the city limits to eliminate excess traffic and drag racing.

The corporate authorities of a municipality may in their discretion alter the course of streets, and there is no obligation on the part of a municipality to refrain from doing so although travel may thereby be diverted from long established usage. *People ex rel. Sharp v. City of Chicago*, 13 Ill.2d 157 (1958). Whether it is necessary to maintain a road for travel is a question for the decision of the local authorities. *Wallin v. Mitchell*, 200 Ill. App. 324, at 327, 328 (1916).

Thus, in *Calumet Federal Savings & Loan Assn. of Chicago v. City of Chicago*, 306 Ill. App. 524 (1940), it was held that the placing of obstructive curbs on Torrence Avenue in the vicinity of 95th and 97th Streets in the City of Chicago, which necessitated a more circuitous route for an abutting property owner to reach a portion of his property fronting on such street, was held to be not a vacation of the street, so as to require the adoption of an ordinance to such end, but merely a regulation of the use of the street.

The problem whether the City might be liable for accidents occasioned by the barricade would depend upon the reasonable care with which the barricade was erected and maintained—whether it was reasonably visible, whether it was sufficiently illuminated at night, whether the warning signs were adequate.

Accordingly, a decision to construct such a barricade is within the sound discretion of the Commissioner of Streets and Sanitation based upon his assessment of the traffic needs of the area.

ACCUMULATED SNOW AND ICE ON SIDEWALKS

(Alderman, 44th Ward—R. F. F.—February 9, 1978)

We have received your letter concerning the obligation of property owners to remove snow from abutting sidewalks and the liability of the City for accumulations of snow. This question has arisen frequently in the past.

The law, as reported at Opinions of the Corporation Counsel, Volume 24, pp. 559, 562, 563 and Volume 26, pp. 222 and 391, is that owners may not be compelled to clear snow and the City of Chicago is not liable for accumulations of snow. Copies of the opinions are enclosed.

The Illinois Supreme Court recently affirmed that governments are not liable for the effects of ice and snow on the public way. *Lansing v. County of McLean*, Ill.2d (January, 1978, #49371).

TELEPHONE BOOTHS ON CITY'S PUBLIC WAYS

*(Commissioner, Department of Streets and Sanitation—
B. R.—May 3, 1978)*

Your letter of April 27, 1978 addressed to the Corporation Counsel, William R. Quinlan, has been referred to the writer for reply. In your letter you request that the City Council Ordinance of July 7, 1965 appearing at pages 4965-66 of the Council Journal be amended to provide for the additional installation and locations of Illinois Bell Telephone Company telephone booths on the City's public ways.

We have reviewed the existing Ordinance on this subject and particularly Articles III and IV of said Ordinance and it is our opinion that you as Commissioner of the Department of Streets and Sanitation are currently authorized to approve or disapprove any additional installations and sites for telephone booths on the public ways as may be applied for by Illinois Bell Telephone Company. The reference in Article III of approximately one hundred telephone booths constitutes an initial installation and not a ceiling on the numbers allowed. Under the powers granted to you in the July 7, 1965 Ordinance, you may increase or decrease the aforesaid one hundred telephone booths as you see fit. Also, you are empowered to approve or disapprove the locations for said telephone booths.

PUBLIC ALLEY BY PRESCRIPTION— EFFECT ON FEE TITLE

(Zoning Administrator—H. F. W.—May 4, 1978)

We wish to acknowledge receipt of your letter dated April 7, 1978 addressed to Mr. William R. Quinlan, Corporation Counsel of the City of Chicago in which you request an opinion as to whether the applicant herein, under the conditions cited herein, may use the total area of the site as reflected on the survey as a basis of calculation for the applicable bulk regulations of the zoning ordinance. You attached a copy of a building permit application, a copy of a letter of opinion and a survey to your letter, which we herewith return to you.

The survey submitted shows the property as having a frontage of 158.28 feet on east 54th Street and 300 feet on Hyde Park Blvd. The 158.28 feet of frontage on 54th Street includes 8.5 feet of the alley next east of the parallel of South Hyde Park Boulevard. The applicant has used the total lot area shown on the survey for its calculations of floor area and density.

The question to be answered is whether or not the applicant may use the square footage of the 8.5 feet of alley as part of the total lot area for calcu-

lating the floor area and density factors. Or in other words is this a public alley.

A public alley may become so by acquisition by deed, by condemnation proceedings or by adverse possession. In each of these three factors, the alley becomes the property of the City of Chicago and the fee title to the alley becomes vested in the City.

A tract of land may be used as an alley and even be improved with paving as an alley without the title to the alley becoming city owned property. When such alley is used for a period in excess of 15 years by the public, that alley becomes a public alley by prescription. This means that the alley may remain open for use by the public forever, however the fee simple title beneath the alley remains the property of the owner of the parcel and if and when the alley used by prescription is terminated the title automatically is vested in the original owner without the necessity of a vacation proceeding. The subject alley herein has been used as a public alley since prior to 1912, and was paved by a private contractor under a city permit in August of 1912. This alley became a public alley by prescription and still remains so today.

The office of the Corporation Counsel in its opinion dated March 30, 1967 addressed to the Superintendent of Maps of the City of Chicago rendered an opinion that the alley in question was a public alley by prescription and since it had been in use by the public in excess of 15 years should be declared exempt on the Assessor's books. Pursuant to that opinion, a verified notice of public alleys by prescription was prepared by the Superintendent of Maps of the Department of Public Works and said document was recorded in the office of the Recorder of Deeds for Cook County on March 31, 1967 as document no. 20097670.

In 1969 the Illinois Appellate Court in the case known as *Ruck v. Midwest Hunting and Fishing Club, et al.* ruled on the right to use a certain roadway. The Court carefully distinguished between adverse possession affecting the fee title and prescriptive rights which apply only to the acquisition of use rights and not fee title. Under this case law, the prescriptive right to maintain an alley, if properly established, creates the appropriate easement for use as an alley and does not affect the fee title. What this means is, in effect that the owner of the subject parcel lots 1 thru 6 inclusive retains the fee title to the 8½ foot strip of alley, subject of course, to the prescriptive rights of the city to maintain the alley in perpetuity.

It is the opinion of our office that the 8.5 foot strip of alley along the back portion of the applicant's survey may be used by the applicant in calculating the total lot area of the parcel, which total lot area then can be used for the calculations of floor area and density.

OBSTRUCTION OF PUBLIC BY RAILROAD TRAINS

(R. F. K.—B. R.—May 10, 1978)

It has come to our attention through a complaint from the employees of the Commercial Stamping & Forging Company located at 5757 West 65th Street that your Railroad train operations have blocked the grade crossing at 63rd Street and Harlem Avenue on many occasions for periods longer than five minutes in duration. A recent incident occurred on March 14, 1978 when the said crossing was blocked from 5:00 p.m. until 5:45 p.m. a duration of 45 minutes.

Section 188-49 of the Municipal Code of Chicago prohibits the blocking of Chicago's public ways by railroad train movements which exceed five minutes. We would ask that your Operating Department institute measures to insure that the 63rd Street and Harlem Avenue Crossing is not obstructed to motor vehicular movements of more than five minutes.

Should this office receive subsequent complaints against your Railroad concerning this matter, we shall forward the same to the Ordinance Enforcement Division of the Corporation Counsel's Office.

USE OF SUB-SIDEWALK SPACE FOR RELOCATION OF UTILITY LINES

(City Comptroller,—H. F. W.—May 30, 1978)

We wish to acknowledge receipt of your recent letter pertaining to the request of the Peoples Gas Light and Coke Co. to relocate several of their gas lines from the center of Jefferson Street to the east side of Jefferson Street between Monroe and Adams Streets. We understand that this relocation is necessary due to the construction by the Metropolitan Sanitary District of Greater Chicago of their Mainstream Tunnel System. You attached several documents and letters to your correspondence, which we herewith return to you.

Your letter, in effect requests several different opinions. The first one deals with whether or not the City of Chicago can terminate permits without properly notifying and serving notice in writing upon those individuals which both constructed and maintained the vaulted space under the sidewalk. Sections 34-36 thru 34-49 of Chapter 34 of the Municipal Code of Chicago spell out in detail the permit requirements and procedures for obtaining permission to use sub-sidewalk space. Section 34-48 entitled Revocations Of Permits reads in part as follows:

"All permits issued for the use of sub-sidewalk space shall be subject to revocation in whole or in part by the Superintendent of Compensation whenever he or the Commissioner of Public Works shall consider it necessary or advisable to have the vault or space covered by such permits, or any portion thereof, vacated in order that the same may be used for a public purpose . . . no permit shall be issued except upon the agreement of the party to whom the same is issued that the said vault or space or any portion thereof required to be vacated shall be vacated within 30 days after the Superintendent of Compensation shall have given notice of revocation of the permit. . . ."

Under these provisions, the Superintendent of Compensation or the Commissioner of Public Works must give notice to the holder of the permits for the use of the sub-sidewalk space to the effect that the permits are revoked instantaneously. The holder of the permits then has thirty days or less in which to vacate the use of the sub-sidewalk space.

Your second question pertains to whether or not the Peoples Gas Light & Coke Co. can make use of the sub-sidewalk space without first applying for a permit and City Council approval pursuant to the provisions of Sections 34-36 thru 34-49 of Chapter 34 of the Municipal Code of Chicago. The provisions of the Ordinance pertaining to the use of sub-sidewalk space deals with situations where property owners abutting the street wish to make use of the portion of the street under the sidewalk for and in conjunction with the use of the

building located on their property. This is a use of the public way for and in conjunction for the benefit of the building of the person seeking the permits.

The representatives of the gas company contend that they are not obligated to pay for the use of the sub-sidewalk space and that they are not required to obtain City Council approval. The original charter issued to the Peoples Gas Light and Coke Co. by the virtue of the legislation passed February 12, 1855, granted to the company the right to lay pipes for the purposes of conducting the gas in any of the streets or avenues of the city with the consent of the City Council.

An amendment of section 2 of the original charter passed on February 7, 1865 stated in part as follows:

"and with the consent of the common council of said city, to lay down and use all necessary pipes for the conducting of gas in and along any of the streets, alleys, avenues or public squares of said city."

The common council of the City of Chicago, on August 30, 1858 passed an ordinance concerning the Peoples Gas Light & Coke Co. The ordinance reads in part as follows:

"Section 1 that permission and authority be and the same are hereby granted to the Peoples Gas Light and Coke Co. . . . to lay their gas mains, pipes, feeders and service pipes in any of the streets, alleys, avenues, highways, public parks or squares throughout said city, subject at all times however to the resolution and ordinances of common council of said City. . . ."

From a reading of the State Statutes and the Ordinance it is clear that the Peoples Gas Light & Coke Co. has received a grant and authority to lay their gas lines under the public streets. The next question to be considered is whether or not the sidewalks joining Jefferson Street on the east and the west are part of the public street or the public way. While it is true that in general terminology there is a difference between a street and a sidewalk, both are part of the public way. In other words does the term street include the sidewalk within the overall definition of a street?

The provisions of Sections 34-36 thru 34-39 pertain to the city's right to lease or rent space under sidewalks which the city does not need at that time for the maintenance of normal facilities such as sewers, water, gas lines, pipe lines etc. . . . Generally all of these facilities are placed under the street portion of a public way. Where, that center portion of the street is required for a Mainstream Tunnel System, these facilities must be relocated to the sub-sidewalk portion of the street area.

Since the proposed use of the sub-sidewalk space on the east side of Jefferson Street between Monroe and Adams Streets is for use of a public improvement facility such as the laying of gas lines to service the whole area the request to use that sub surface area is not subject to the provisions of section 34-36 entitled Use of Sub-Sidewalk Space.

It therefore follows that because the proposed use of the sub-sidewalk space is for the laying of a gas line to serve the general area, it does not come within the provisions of leasing sub-sidewalk space. It also follows that since the original charter and the amendments thereto along with the Ordinances of the City of Chicago have conferred to the Peoples Gas Light and Coke Co., the right to lay gas lines in the city streets it is not necessary for the company to obtain City Council approval in order to lay the gas lines within this one city block area.

We sincerely trust that this information will enable you to review the Peoples Gas Light and Coke Co. construction project and take the appropriate actions to implement said program.

RECONSTRUCTION OF WORK PROGRESS ADMINISTRATION STREETS

(Alderman, 41st Ward, E. H.—August 3, 1978)

Your recent inquiry to Corporation Counsel Quinlan concerning "WPA Streets" has been referred to me for reply.

During the Depression of the 1930s a number of roadways were laid down in Chicago as Works Progress Administration projects. This was done, not by ordinance, but by agreement between the federal government and the city. They were built at federal expense, but to be maintained by the city.

The City Department of Streets and Sanitation has a list of such streets. They are not all 16 feet wide. Some are wider.

As for liability, the improved portion is the city's responsibility, but not unimproved areas.

However, abutting property owners can relieve themselves of responsibility by recourse to the provisions of Chapter 200.4 of the Municipal Code of Chicago, Illinois. This was enacted in 1976. It affords owners of property abutting any public way that was improved by the W.P.A. and has not been reconstructed the opportunity to submit a petition, signed by the owners of at least 51 percent of the relevant frontage, for the construction of a city street on such public way. If the petition is granted, the cost is in part met by a tax on contiguous property of \$17.00 per each frontage foot. Residents 65 years of age or older are charged only \$8.50 per each frontage foot.

AUTHORITY TO CLOSE: DRIVEWAY CROSSING CITY PROPERTY

*(Commissioner, Department of Streets and Sanitation—
H. A. T.—August 18, 1978)*

Your letter of August 16, 1978 advised that there is presently existing a private alley just West of and abutting Lot 5, Block 7, in Canal Trustees' Subdivision of the West Half of the Southwest Quarter of Section 3, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois, commonly known as 34 East Oak Street.

You also stated that there is in existence a driveway from said property crossing the City sidewalk and entering Oak Street, but that there is no record of a driveway permit authorizing egress and ingress over City property at said site. You note that five properties presently use said driveway and you are requesting our opinion as to the vulnerability of the City to claims for damages by the abutting properties in the event you proceed with the closing of the driveway.

The enabling Legislation for control of street and sidewalks is provided in Chapter 24 of Illinois Revised Statutes, Section 11:80:2, 11:80:11 and 11:80:13. The implementing City Ordinance concerning driveway permits begins with Section 33:15 of the Municipal Code and reads, "No person shall hereinafter

... establish a driveway over any public sidewalk or parkway without first obtaining a permit." Section 33-17 requires a bond in the sum of \$10,000 to indemnify the City for damages of injuries arising out of the use as a driveway. Section 33-18 provides for fines in the event of violations of the ordinance.

We have examined the 80 acre sheet for said area in the office of the City Bureau of Maps and Plats. The private alley referred to is 10 feet wide and runs north from Oak Street to a 16 foot public alley running parallel to and immediately north of Oak Street. Access to Bellevue Street is available through the connecting public alley.

Oak Street at this point is just east of Rush and State Streets. It has a substantial flow of both automobile and pedestrian traffic and cars using a private driveway are a potential hazard to pedestrians and impede the flow of traffic.

From the above we arrive at three salient factors:

1. No driveway permit was issued or indemnification bond processed to protect the city.
2. The abutting property owners have access to public alleys and streets.
3. The driveway is a potential hazard to pedestrians and traffic.

Volume 25, page 413 of Corporation Counsel Opinions is directly in point. The Studebaker Theatre on Michigan Avenue was requesting a permit for an 8-foot driveway and the continuation of a 16-foot driveway that leads to a private alley. The writer pointed out Section 33-17 of the Code which reads in part as follows:

"An application shall be approved and a permit issued only upon a determination of the commissioner of streets and sanitation that the driveway will not (1) create undue safety hazards in the use of the street, parkway or sidewalk by vehicular or pedestrian traffic, nor (2) impede the safe and efficient flow of traffic upon the streets and sidewalks adjoining the property for which the driveway is proposed, and upon his determination that the existing and proposed use of the property to be connected by said driveway is in all respects in conformity with existing traffic, zoning, and building ordinances."

He concluded that under the conditions recited in said section the Commissioner of Streets and Sanitation may deny the application for driveway permit.

As to the 16-foot driveway, the writer stated succinctly, "the driveway being operated without a permit or bond is in violation of Law and you may order its removal."

We concur and find such opinion applicable to the presented facts.

EXPENSES FOR REMOVAL OF TRAFFIC CONTROL SIGNALS

*(Commissioner, Department of Streets and Sanitation—
B. R.—September 15, 1978)*

Your letter of September 12, 1978 addressed to the Corporation Counsel, William R. Quinlan, has been referred to the writer for reply. Kindly be ad-

vised that Article III of the Agreement between Ford Motor Company and the City is silent as to which party shall be responsible for the expenses associated with the removal of the captioned traffic control signals. In fact, the entire Agreement is silent as to this subject matter.

Article VII of the Agreement provides, "It is understood that City shall at all times, in its sole determination, have the right to remove said signals and devices." Since the removal of the signals is at the request of Ford Motor Company and the removal will benefit the Company in the avoidance of maintenance and electrical energy charges, it is my recommendation that the City bill the Ford Motor Company for said removal.

It is my legal opinion that it is unnecessary to execute a new agreement and/or amend or repeal the existing ordinance with respect to the removal of the traffic control signals at Torrence Avenue and 130th Street.

RESERVATION OF EASEMENT FOR PUBLIC SERVICE FACILITIES

*(Commissioner, Department of Streets and Sanitation—
H. A. T.—March 9, 1979)*

The Law Department finds no legal objections to the City reserving an easement for the City electrical facilities in the proposed vacation of the above designated alley. Chapter 24, Division 91 (11:91:1) of the Illinois Revised Statutes of 1977, pertaining to vacations provides,

"If there are any public service facilities in such street or alley, the ordinance may also reserve to the municipality or public utility . . . such property rights-of-way and easements as in the judgment of the corporate authorities are necessary or desirable. . . ."

REGULATION OF OVERWEIGHT OR SPEEDING TRUCKS

(T. L.—K. J. S.—July 9, 1979)

In reply to your letter of June 29, 1979 please be advised that overweight trucks, or speeding trucks in your neighborhood are to be reported to the police in your district. The Corporation Counsel prosecutes the case when it is in court. Heavy trucks may travel one block to reach their destination in certain restricted areas. Chapter 27 Sec. 357 and 341 of the Municipal Code of Chicago.

As to noise pollution please notify the Environmental Control Department at 744-4070 which sends out an inspector on the problem.

In regard to street repairs, contact your local Alderman, and the Department of Streets and Sanitation, at 744-4697. If the Action Wrecking Company or the Red Devil Paint Company is responsible for damaging the streets, on a signed complaint by the inspector, the Corporation Counsel can then prosecute the case in court.

If you have sustained damages to your individual property you can consult an attorney and sue for civil damages.

We wish to cooperate with you within our authority and jurisdiction—and thank you for the interest you show to better your community.

RESTRICTIONS ON SOLICITATION OF RELIGIOUS DONATIONS IN PUBLIC PLACES

(Commissioner, Department of Public Works—
R. F. F.—June 11, 1979)

Mr. Quinlan forwarded your letter transmitting the request of the Hare Krishna Society for permission to use Navy Pier. You asked the extent of the rights of this religious sect to use the Pier to collect donations. You also asked whether these activities could be confined to booths.

The March 9, 1979 letter from the International Society for Krishna Consciousness is not specific as to the location or nature of its request. It seeks "to distribute religious literature and sanctified foodstuffs and flowers and to collect donations for religious purposes in the Navy Pier."

The distribution of religious literature, "selling" or collecting donations for such literature and collecting donations to support religious organizations is protected by the United States and Illinois Constitutions. Such activities may be conducted without prior permit in public places. The courts have held that public areas inside public buildings are appropriate for such activities. For example, in *C.A.M.P. v. City of Chicago*, 500 F.2d 921 (7th Cir., 1975), the court held that the interior of the terminal buildings at Chicago-O'Hare International Airport was appropriate for public forum purposes and that the City of Chicago could not prohibit those activities there.

The court in that case noted, however, that Chicago might impose restrictions as to location so that these activities do not unreasonably interfere with the rights of others in using such places or interfere with the principal activities for which the buildings are intended. Similarly, persons engaging in such religious solicitation are not given license to violate ordinances and statutes governing proper behavior.

Applying these principles to Navy Pier, passing out religious literature and requesting donations for religious purposes may take place in public areas of Navy Pier. Because of the variety of activities that take place there, it is impossible to specify the locations where such activities may take place. Public passageways or gathering places are areas where these activities may be permitted, but, of course, display, entertainment, private and similar facilities are not thought of as public areas appropriate for proselytizing.

Your request further sought our opinion whether such activities may be confined to limited areas such as booths. Municipal authorities experimented with such regulations at two airports. In the case of the Greater Pittsburgh International Airport, a federal court found that confining solicitations to booths did not conform with the constitutional dictates of the First Amendment. *ISKCON v. Griffin*, 437 F. Supp. 666 (W.D.Pa. 1977). The District Court in Atlanta, however, upheld such restrictions for the Atlanta airport. The opinion is not reported. However, the case is now on appeal to the United States Court of Appeals for the 5th Circuit.

It is our opinion that confining soliciting to booths will not withstand constitutional scrutiny. Although such a concept may be desirable from the point of view of free movement of the public, the rights of religious organizations to circulate in genuinely public spaces cannot be so limited.

Section C. ADVERTISING AND HANDBILLS

CONSTITUTIONAL LIMITS OF LITTERING LAWS

(Chairman, City Council Committee on Local Industries,
Streets and Alleys—R. L. C.—January 21, 1974)

With your recent letter, you forwarded for our review a copy of an Anti-Littering Ordinance Amendment recently introduced by Alderman Wigoda and referred to your committee.

The language of the proposed ordinance presents several problems. The phrase "it is the right of any citizen of Chicago to use the public ways to disseminate literature" contradicts and thus, if enacted, would repeal by implication the present ordinance prohibiting distribution of commercial advertising literature. See, *e.g.* Ch. 36, sec. 28, Municipal Code of Chicago. The proposed prohibition against litter remaining "upon the public way or any other place" is too broad, as is the phrase "so as to constitute an unsightly condition." "Any other place" may mean private property, which is clearly beyond reach of the ordinance. "Unsightly condition" is too vague to give persons warning as to what conduct is impermissible.

In addition, the proposed ordinance would be unconstitutional if applied to persons distributing literature protected by the First Amendment. The Supreme Court has stated that the Constitution does not allow municipalities to interfere with distribution of protected material on the grounds that such distribution may cause litter. In *Schneider v. Irvington*, 308 U.S. 147 (1940), the Court said: "We are of the opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press." Although the proposed ordinance does not directly prohibit distribution of protected materials, it does impose an undue burden upon those wishing to do so. As the Illinois Supreme Court noted in a similar context, "The Constitution of Illinois is even more far-reaching than that of the United States in [protecting First Amendment rights]." *Village of South Holland v. Stein*, 373 Ill. 468, 479 (1940). Thus, it would appear that the constitutionally preferred method of policing the streets would be, in the words of the *Schneider* court, "punishment of those who actually throw papers on the streets." Prior opinions of the Corporation Counsel directed that persons distributing protected literature not be arrested for littering. *Herschel v. Dyra*, 365 F.2d 17 (7th Cir. 1966).

For these reasons, I would advise the committee not to pass Alderman Wigoda's proposal.

UNIFORM APPLICATION OF SIGN REGULATIONS

(Alderman, 19th Ward—F. G. S.—June 21, 1974)

Your letter of June 13, 1974, addressed to Richard L. Curry, Corporation Counsel, has been referred to the undersigned for attention and reply. In your letter you request an opinion on a proposed Amendment to Chapter 96.1 of the Municipal Code which has been introduced in the City Council and referred to your Committee for appropriate action.

The proposed Amendment would add a new sub-paragraph (c) to Section 86.1-12 which would in effect provide extensive limitations and restrictions with respect to signs to be erected on North Broadway between West Diversey Parkway and West Cornelia Avenue, an area of approximately seven city blocks (2800 North to 3500 North). The Zoning in this strip is as follows:

- 1) From Diversey Parkway to approximately 100 feet North thereof B3-4.
- 2) From approximately 100 feet North of Diversey Parkway to the Center line of West Surf Street B5-4.
- 3) From the Center line of West Surf Street to the Center line of West Cornelia Avenue B4-4.

The proposed amendments provide detailed requirements for signs erected along North Broadway within the area delineated with respect to illumination, projection, height, advertising signs, maximum size, maximum number, exemptions and non-conforming signs.

It should be noted that the provisions with respect to permitted signs and restrictions governing signs in business districts are contained in Chapter 194A (Chicago Zoning Ordinance), Article 8, Business Districts, Section 8.9 through 8.9-7. Signs—Use and Bulk Regulations.

Section 86.1-12 of the Municipal Code states specifically that the provisions of the comprehensive Zoning Ordinance regulate the type and size and permissibility of signs, sign boards and structures. The remaining provisions of 86.1-12 are general in nature and provide any sign from being erected or projecting more than 12 inches over Michigan Avenue between Roosevelt Road and Oak Street and Lake Shore Drive between Randolph Street and Hollywood Avenue, and also prohibit advertising within 400 feet of streets bounding public parks, expressways, toll roads, Lake Shore Drive and any portion of the comprehensive superhighway system.

It is our opinion that the proposed amendment applicable to a small area of approximately 100 feet in length Zoned B3-4, another area of approximately 325 feet in length Zoned B5-4 and the remaining area of approximately six blocks in length Zoned B4-4, constitutes special legislation which would in our opinion be held discriminatory and violative of the equal protection provisions of both the Illinois and United States Constitution, in view of the fact that pursuant to the provisions of Chapter 194A, Article 8, Section 8.9 through 8.9-7, uniform requirements are equally applied to all areas carrying the same zoning classification.

It is our further opinion that any Amendments dealing with sign limitations should be made to Chapter 194A and should be uniform in nature in their application to all areas similarly zoned.

OWNERSHIP OF DISPLAY SIGNS UPON LEASE TERMINATION

*(Acting Purchasing Agent—R. L. C.—
October 28, 1974)*

By letter this date you forwarded a request from Bal Graphics, Inc. which states in part, "We cannot ascertain whether the existing display properties belong to the Department of Aviation and would not be included in our bid, or whether our competitor owns them."

The present agreement between the City of Chicago and Dell Airport Advertising, Inc., which will be terminated upon the event of awarding a new contract to the successful bidder, contains the following relevant language:

"Upon the termination of this agreement, through passage of time or otherwise, it is mutually agreed that Permittee shall have *no* further claim, right, title or interest in or to any of the leasehold improvements installed by it under this lease. Display boxes, display frames, backing, glazing, trim, and similar equipment which may have been installed by Permittee during the term of this agreement and which are in actual use by Permittee for advertising purposes under this agreement shall be considered leasehold improvements as the term is used herein."

It is the position of the Corporation Counsel that the City owns all of the existing display properties.

In the event of challenge and judicial determination that this position is not binding, compelling and the legal consequences of the aforesaid language, then the bidder will be required to substitute the properties in kind without reimbursement from the City or the Airport for such expenditures.

"FOR SALE" SIGN BAN

(J. G. C.—M. J. K.—September 12, 1975)

In response to your letter of August 5, 1975 to this office I have informed the office of the Chicago Commission on Human Relations of your concern regarding the proper enforcement of the City's ordinance banning "For Sale" signs in certain residentially zoned neighborhoods (Ch. 198.7B, Chicago Municipal Code). The Commission is charged with the enforcement of that ordinance.

I have attached a copy of the ordinance so that you may be apprised of the procedures followed by the Commission in enforcing its provisions. I have also requested that a representative of the Commission contact you for the purpose of obtaining more factual information so as to enable the Commission to act on your complaints.

If you have any further questions regarding this matter, please direct them to Messrs. David Marcus or Willie F. Granderson of the Chicago Commission on Human Relations (744-4128).

PRIVATE ADVERTISING ON PUBLIC
WAYS

*(Deputy Real Estate Agent—B. R.—
March 29, 1976)*

You request a legal opinion from this office with respect to the lawfulness of authorizing the installation of directory signs upon the public ways which advertise private business interests. This question has been presented to the Corporation Counsel's Office on several occasions in the past. We would specifically refer to the lengthy opinion of former Assistant Corporation Counsel Martin H. Foss dated May 10, 1949 as set forth in Volume 23 at Page 692 in the Opinions of the Corporation Counsel and Assistants. Attorney Foss concluded that public property may not be employed, as herein requested by the Portage Park Chamber of Commerce, for the benefit of private enterprise.

The writer has reviewed the said Opinion including subsequent case law and it is his legal opinion that it would be unlawful for the City of Chicago to authorize the use of the [citizens'] public ways as heretofore described.

ILLEGAL POSTING OF SIGNS

(B. J. M., Attorney—K. J. S.—September 13, 1979)

In reply to your letter of August 14, 1979 as to signs illegally posted on poles, trees, etc., please be advised this is a violation of Chapter 36 Sec. 30 or Chapter 193 Sec. 20 of the Municipal Code of Chicago.

As you know, the person posting the sign is the violator, and he has to be apprehended in the act. After an arrest is made the Corporation Counsel prosecutes the case in court.

Section D. TRAFFIC AND PARKING
REGULATIONS

PRESUMPTION OF ABANDONMENT

(Chicago Attorney—R. L. C.—July 30, 1973)

In response to your letter of May 21, 1973, I am certain that you will be able to develop a compelling argument against the application of any "presumption" of abandonment in relation to your vehicle.

However, I believe your letter ignores the realities which local governments throughout the country are confronted with in meeting the challenge of the derelict or abandoned automobile which proliferates otherwise fine communities. The dimension of the problem in Chicago is such that more than 50,000 such vehicles are towed from the public way each year. The possibility for isolated mistakes or errors in administering this type of program is considerable. However, I think it interesting that in the last five years not more than three suits have been brought relative to "illegal conversion" of a motor vehicle picked up under this program.

If you begin with the premise that the public ways are provided for parking purposes rather than for the movement of vehicular traffic, then the inference or presumption of abandonment is considerably more difficult to countenance. This, however, is not the footing upon which the program is based. The public health, safety, welfare and the pursuit of neighborhood esthetics, in my opinion, justifies the presumption that an owner unwilling to license his automobile for the current year while parking it in the public thoroughfare should carry the greater burden in proving that the vehicle is not in fact abandoned.

TERMINATION OF OFF-STREET NON-ACCESSORY PARKING LOTS IN THE CENTRAL AREA PARKING DISTRICT

*(Chairman, Zoning Board of Appeals—A. H.—
July 30, 1973)*

Your recent letter, which refers to Section 5.8-7 of the Chicago Zoning Ordinance, creating a Central Area Parking District and prohibiting the establishment of non-accessory off-street parking facilities within its boundaries, has been referred to the undersigned for consideration and response. You ask whether the Zoning Board of Appeals now has the authority, in the light of the Central Area Parking District Ordinance, to extend terminal dates for non-accessory public parking lots previously granted by your Board within the boundaries of the District, as has been your practice in the past, pending the development of the property.

The ordinance originally instituting the Central Area Parking District on June 14, 1972, contained several preamble clauses which cited the public need to discourage expansion of vehicular traffic within the area so as to avoid congestion of traffic, delay and pollution; so as to stimulate broader utilization of mass transportation alternatives; and finding that it was in the public interest to limit the availability of parking within the central business area.

Further, Section 11.10-4 of the Zoning Ordinance sets forth the standards to be considered by the Zoning Board of Appeals when granting a special use, among which are the necessity for the public convenience at the particular location; that such use be so designed, located and proposed to be operated that the public health, safety and welfare will be protected; and the requirement that such use be designated as a special use within Articles 7, 8, 9 and 10 (Chicago Zoning Ordinance, Sections 11.10-4 (1)a.,b., and (3)).

From the foregoing policy of the law and legislative findings in establishing the Central Area Parking District, as well as from the special use provisions of the ordinance itself, it is our opinion that the Chicago Zoning Board of Appeals lacks authority to extend terminal dates for off-street, non-accessory parking lots for any period, as such special use affects property within the Central Area Parking District.

POLICE PATROL OF SHOPPING CENTER PARKING LOTS

(Chicago attorney—A. H.—October 15, 1973)

We have your recent letter in which you have asked for a review of a prior opinion issued by this office relating to the operation of the above named park-

ing lot which contains some 36 stalls of which most are metered, for which there are no parking attendants, and which have been provided by the owner of the shopping center for use exclusively by customers of merchants doing business at the center.

You note an opinion issued by this office under date of April 7, 1972 construes Sections 27-365(a), 27-381 and 156-13 of the Municipal Code of Chicago and concludes that the shopping center parking lot is not a public garage within the meaning of the Municipal Code and does not need to be licensed in order to accommodate the vehicles of its patrons. Further, the opinion holds, the Chicago Police Department may issue a traffic violation notice for any vehicle illegally parked in such a shopping center parking lot upon a written complaint signed by the owner of the lot or his authorized agent.

You state that the Chicago Police Department, through Captain Edward Barry of Area 1 Traffic, has informed you that since many of the stalls in the above named parking lot are metered, the lot must be licensed in order for the Police Department to issue tickets with respect to automobiles illegally parked therein. You observe that since the April 7 opinion of this office fails to mention the fact that parking meters are used in the lot, a point which the Police Department appears to rely, that this then requires a further definitive statement by the Law Department on this subject.

We have taken the liberty to discuss this matter further by telephone both with yourself and with Captain Barry for the purpose of further refining and identifying the issue upon which the controversy appears to revolve. The contention seems to be that the Police Department is expected to issue parking tickets for persons who have parked their vehicles in the metered stalls but have overstayed the time limit therein prescribed, for which the parking lot owner seeks to have the issuance of a parking violation ticket.

Please be advised that in the opinion of this office, the remuneration to the shopping center operator from merchants, or patrons thereof, or employees, whether taken in the form of parking meters, monthly leases, or other consideration, does not render the operation a public garage, unless supervised by attendants under the terms of Section 156-13, and therefore does not require the procurement by the owner and operator of the parking lot of a public garage license.

Nevertheless, it is clearly not the intent of Sections 27-365(a) and 27-381 to provide a police patrol for the purpose of ascertaining whether a patron has failed to "feed the meter" as is suggested. Rather, it is where a person unrelated by activity to the appropriate use of the parking lot occupies space contrary to the purposes of the off-street parking provisions of the Chicago Zoning Ordinance that gives rise to police assistance.

The appropriate method of securing police services of the character suggested by the apparent set of facts in this case appears in the Illinois Vehicle Code, Section 11-209 (Ill. Rev. Stat. 1972 Supp., Ch. 95-1/2, Par. 11-209), which authorizes the corporate authorities of any municipality and the owner of any shopping center which controls a public area located within the limits of that municipality to regulate the parking of automobiles and the traffic of such parking area, which contemplates, among other things, remuneration to the municipality for such continuous police services on private property. In the event that your client is desirous of contracting for such services pursuant to Section 11-209, such a proposal should be addressed to the Superintendent of Police for initial consideration as to desirability and feasibility of providing such services from the standpoint of the City and for such other and further consideration as may be desirable.

ENFORCEMENT OF AIRPORT TRAFFIC REGULATIONS

*(Superintendent of Police,—R. L. H.—
January 30, 1975)*

Public Roadway Traffic Regulations for Chicago-O'Hare International Airport were promulgated and issued by the Commissioner of Aviation to be effective on January 27, 1975, pursuant to the authority vested in him by Chapter 37, Section 37-13.1 of the Municipal Code of Chicago.

In response to the first question raised to us through your Director of Research and Development, it is our opinion that the promulgation and issuance of these Regulations was pursuant to law such that these Regulations are valid, binding and enforceable.

Your second question relates to the procedures to be followed in the enforcement of these Regulations. We have reviewed and discussed the matter with members of our Ordinance Enforcement and Traffic Divisions and have further discussed the matter with the Presiding Judge of the Traffic Court. As a result of these discussions, we have arrived at the following procedural points which should resolve the problems raised in this question.

1. When a violation of the Regulations is witnessed, the police officer has three courses of action:

a. If a traffic violation citation can be issued for the violation of the Regulation, such a citation should issue.

b. If a citation returnable to the Public Vehicle Commission can be issued for the violation of the Regulation, such a citation should issue.

c. If, however, the violation committed does not lend itself to either of the foregoing citations, a Non-Traffic Violation Citation (an "R" ticket) should be issued to the violator requiring an appearance in Traffic Court on the officer's regular court date and in one of the rooms regularly utilized by that officer. The dates and rooms at Traffic Court are to be directly keyed into the officers current key system for traffic violations.

2. Where the "R" ticket is used, it should be filled in with reference to Chapter 37, Section 37-13.1, the number of the Regulation violated and a short description of the particulars of the violation. A filled in example is attached hereto.

3. Follow-up procedure on violations under 1a and 1b above are standard. Where a violator receiving a citation under 1c above does not appear in Court, a warrant will issue for his arrest.

4. When an "R" ticket is issued, there will be no physical arrest and no bond will be posted. If there is no court appearance, a bond will be set with the arrest warrant.

5. We suggest that the O'Hare Police Detail keep a record of citations issued such that repeaters, if any, can be easily identified and the Court advised of same.

6. The Presiding Judge of the Traffic Court insists that a record of the numbers of the "R" tickets be submitted to the computer personnel at Traffic Court prior to the issuance of ticket books to police personnel so that a control can be kept in the same manner as control is kept currently on traffic tickets.

It is our opinion that the foregoing should properly advise you of the procedures to be taken in the enforcement of these Regulations and, if you still have any questions, please advise.

The third and last question posed to us was whether someone from our office would be available to instruct the O'Hare Police Detail of these procedures. It appears that the procedures are very simple and self-explanatory but, in the event some instruction is necessary, the undersigned would be available to spend some time with Lt. Munger and his men.

COURTESY VEHICLE REGULATIONS

*(Car Rental Company,—R. L. H.—
September 30, 1975)*

A formal complaint has been received in our office setting forth that a courtesy car carrying your company name and address is operating at Chicago-O'Hare International Airport with a sign on the roof of the vehicle indicating your car rental rates.

Since this is a direct violation of the second sentence of paragraph 4.5.0. of the Chicago-O'Hare International Airport Public Roadway Traffic Regulations which reads:

"4.5.0. Identification of Courtesy Vehicles—No person shall operate a courtesy vehicle at the airport unless such courtesy vehicle is identified by the name or logo and location of the company. No other advertising on said vehicle shall be permitted. Courtesy vehicles in violation of these rules and regulations shall not be permitted to stop in the courtesy vehicle loading zones."

You are hereby directed to either remove such rental rate sign from your courtesy vehicle or you will be prohibited from stopping in the loading zone area at the airport and your driver will be subject to arrest.

A copy of this letter is being sent to the Chicago Police Department detail at the airport as their instructions to fully enforce the aforesaid provision.

Immediate compliance with paragraph 4.5.0. will be necessary to avoid police action.

PARKING CITATIONS BY HOSPITAL SECURITY PERSONNEL

(J. G. P.—R. F. F.—October 10, 1975)

This is in answer to your October 3, 1975 letter requesting the Corporation Counsel's opinion as to the legality of parking citations being given by the security personnel of the Cook County Health and Hospitals Governing Commission.

Your letter describes the serious problem encountered in the public and private areas in and around Cook County Hospital caused by illegal parking. You also enclosed memoranda from the Cook County Hospital's Director of Security outlining a plan to be carried out should approval be given to hospital security personnel to give parking citations. That memorandum further states that liaison meetings have occurred between the Cook County security

officials and officers of the Circuit Court of Cook County, the Chicago Police Department Traffic Court section and the commander of the Twelfth Chicago Police District. We understand this to mean that approval has been obtained from these officials.

By law, security officers of the Health and Hospitals Governing Commission of Cook County are "peace officers." Section 61.5-1 of an "Act to Revise the Law in Relation to the Election of County Commissioners in Cook County and Fix the Term of Office" (Ill. Rev. Stat. 1973, Ch. 34, 1919) provides that such security personnel "shall be peace officers and as such have all powers possessed by policemen in cities . . . including the power to make arrest on view or warrants of violation of state statutes or city or county ordinances." I note, in addition, that by resolution of Health and Hospitals Governing Commission of Cook County (No. 75-HHGC-127, passed September 16, 1975) hospital security personnel are expressly authorized to issue tickets to parking violators.

In accordance with an opinion of the Corporation Counsel of October 4, 1961 (Opinions of the Corporation Counsel Vol. 25, page 431), which approved a similar procedure for the University of Illinois Police, and taking into account the representation stated above, it is our judgment that Cook County Health and Hospitals Governing Commission security personnel may issue notices and complaints for parking violations.

It should be noted that complaints for violations of the law may be filed if sworn to by the complainant. The sworn statement of Health and Hospitals Governing Commission security personnel that they have observed a violation of parking ordinances permits the filing of a complaint. The standard parking citation form presently in use indicates that the complainant who issues the ticket does so "being duly sworn upon his oath."

However, before the Health and Hospitals Governing Commission may begin issuing tickets, the standard parking ticket form should be changed, since it states "This notice issued by Police Department City of Chicago."

Of course it is understood that officers issuing citations must appear in court upon prosecution of parking violations and that they may only issue citations under the appropriate ordinances and only when the circumstances justify it.

UNIFORM PARKING SIGN REQUIREMENTS

(Acting Commissioner, Department of Streets and

Sanitation—H. F. W.—March 11, 1976)

We wish to acknowledge receipt of your letter of December 19, 1975. You attached a diagram of a proposed sign to your letter and requested an opinion as to whether said proposed sign would meet the legal requirements for signs under both city and state law.

Under the provisions of Section 27-397 of Chapter 27 of the Municipal Code of Chicago, all traffic control signs, signals, and devices shall conform to the manual and specifications approved by the State of Illinois Department of Public Works and Buildings. This publication is entitled "Manual on Uniform Traffic Control Devices for Streets and Highways."

Under the provisions of the Federal Highway Safety Act of 1966, the United States Department of Transportation is required to adopt a Manual

on Uniform Traffic Control Devices. The procedures for implementation of the Federal Highway Safety Act required that the various state departments of transportation adopt a state manual and specifications for a uniform system of traffic control devices which state manual shall conform to the "system" set forth in the "National Manual on Uniform Traffic Control Devices." Pursuant to these federal requirements, the State of Illinois enacted Section 11-301 of Chapter 95 1/2 of the Illinois Revised Statutes, 1973.

Subsequent to your letter, you also furnished our office with copies of the National Manual on Uniform Traffic Control Devices and the State Manual on Uniform Traffic Control Devices. It should be noted that neither of these publications lists, identifies or establishes recommended specifications for parking meter signs. In fact neither manual mentions the topic of "parking meter signs." The national manual in Sec. 2B-29 entitled Urban parking and Stopping Signs (R7 Series) establishes a recommended minimum size for parking signs of "12"x18". The recommended minimum size for tow away zone and snow route signs is 12"x6". The recommended minimum sizes in the state manual are the same. Both the national and state manuals allow a certain amount of flexibility in the mounting height for signs. As a general rule, in business, commercial and residential districts where parking and/or pedestrian movement is likely to occur or where there are other obstructions to view, the clearance to the bottom of the sign should be at least seven feet.

The proposed sign sketch and the sample signs furnished to our office measure approximately 4"x9". These sizes are well below the minimum standards for acceptable sizes set out in both the national and state manual. The signs themselves deal with three separate topics, namely (1) parking meter time and cost (2) no parking limitations as to hours and (3) no parking on snow routes.

The portions of the signs dealing with the time allowable and the costs for metered parking, really amount to a rephrasing of the parking meter legend presently placed on the parking meter head and may be placed on the parking meter pole below the parking meter head, as a more visible control instruction for the users of the parking meter.

The no parking restrictions as to hours and the no parking on snow route portions of the proposed signs do not conform to the minimum specifications as to size and, if mounted on the parking meter pole below the parking meter head, would not conform to the recommended minimum height limitations of both the national and state manuals.

We would like to call your attention to Illinois Revised Statutes 1973, Chapter 95 1/2, Section 11-305(c) which section raises a material question as to the validity of the proposed signs being placed on the parking meter pole below the parking meter head. This section reads in part as follows:

"No provision of this Chapter for which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. . . ."

The placing of the proposed signs on the lower stand of the parking meter involves a factual determination as to whether said sign is in a position to be sufficiently legible under this section on the statute. This would indicate that the "no parking" and the "snow route" portion of the proposed sign located below the parking head, may not conform to the national and state specifications as to minimum height limitations and minimum sign size.

It is the opinion of our office that the "No Parking" and the "No Parking, Snow Route" portions of the proposed signs would not qualify as valid legal signs under the provisions of Chapter 27 of the Municipal Code of Chicago, the Illinois Revised Statutes 1973, Chapter 95 ½, Section 11-301 through 11-313 inclusive.

TOWING SIGNS ON PRIVATE PROPERTY

*(Chief of Security, Merchandise Mart—R. F. F.—
—August 30, 1977)*

This is in answer to your letter of August 18, 1977 inquiring about the necessity of posting informational signs regarding the towing of motor vehicles parked on private property.

You state that your company maintains private driveways on its property with bus, taxi and through-traffic lanes. These areas are posted with no parking signs. You also state that automobiles parked in violation of such signs will be towed from the premises by towing firms. Each time a towing firm is called, an agent of the property will enter into an agreement with that towing company for the particular vehicle involved. You have attached a copy of such an agreement, which contains blank spaces to be filled in with the name of the towing company, the description of the vehicle, its location and other pertinent information.

Section 27-381.3(a) of the Municipal Code of Chicago provides that property owners may enter blanket agreements with towing firm operators to tow all improperly parked vehicles. In cases of such a blanket agreement, Section 27-381.3(b) provides that signs of a certain size and containing specific information must be posted at entrances and exits to private parking areas. There is no specific requirement to post signs containing this information when towing agreements are made on a vehicle-by-vehicle basis. Nevertheless, the policy supporting the sign-posting requirement is served by posting such signs regardless of the kind of towing agreement. Drivers should be informed of the consequences of failure to respect parking regulations, and awareness of the consequences should encourage them to respect those regulations.

You also ask whether it is necessary for the Chicago Police to issue a ticket to the vehicle improperly parked before such a tow is made. Nothing in the Municipal Code of Chicago makes this a prerequisite to towing unauthorized vehicles improperly parked on private property.

If we can be of any further assistance, please do not hesitate to contact us.

EQUAL PROTECTION AND "RESIDENT PARKING ONLY" RESTRICTION

*(Commissioner, Department of Streets and Sanitation—
R. R.—September 9, 1977)*

This letter is in response to your inquiry of September 16, 1976 and Deputy Commissioner Kloak's letter of August 29, 1977 which requested the opinion of the Corporation Counsel on the question of whether the Department of Streets and Sanitation has authority pursuant to Section 27-430 of the Municipal Code to adopt "resident parking only" restrictions on certain streets.

It is our conclusion that Section 27-430 does provide authority for the adoption of such an experimental regulation. However, our research also discloses that similar regulations have in several instances been declared unconstitutional as a denial of equal protection. See Annotation 70 ALR 3d 1323. For this reason we believe that such a regulation will more likely withstand constitutional challenge if adopted pursuant to certain factual findings which demonstrate traffic congestion or other compelling reasons for limitation of parking privileges. A regulation premised upon a need for a general parking prohibition, but with hardship or necessity exceptions for local or abutting residents may be constitutionally defensible as a traffic control measure. However a regulation which simply grants to local residents privileges which are denied to the general driving public is not apt to pass equal protection examination.

Accordingly, it is recommended that such regulations issue only where traffic surveys demonstrate such congestion or other factors as would indicate the necessity for a general or substantial prohibition of parking and where, due to zoning, predominant lack of available off-street parking space and similar conditions it is demonstrated that local or abutting residents must be excepted from the prohibition.

The Corporation Counsel's Office will, of course, be available for your assistance in assessing the relevance of factors to be considered in adopting a regulation or in the drafting of such a regulation.

CAR RENTAL COMPANY LIABILITY FOR PARKING VIOLATION

(V. Y.—R. F. F.—November 8, 1978)

Enclosed please find a copy of *City of Chicago v. Hertz Commercial Leasing Corp., et al.*, 71 Ill.2d 33 (835). The Ordinance which makes car leasing companies liable for parking violations is stated within this opinion.

UNAUTHORIZED PARKING ON PRIVATE PROPERTY—SNOWSTORM OF 1979

(E. D.—B. R.—January 30, 1979)

Your letter addressed to Honorable Michael Bilandic, Mayor of the City of Chicago, has been referred to the writer for reply. We agree with your sentiments expressed in your letter that private property owners should be more considerate in permitting public parking in areas they control especially in light of the problems occasioned by the unprecedented snowfall in Chicago.

The City has attempted to provide additional parking space by clearing lots at churches and at schools for the accommodation of private vehicles. We also requested that businesses be considerate in the use of their public parking lots.

Unfortunately, the City cannot mandate that private property owners allow unauthorized vehicular parking. We can ask for cooperation, however, we cannot demand the same.

The Illinois Commerce Commission has been empowered by law to regulate private towing companies within the State of Illinois. This office shall bring to the Commission's attention the matters contained in your letter.

We apologize to you for your unhappy experience in our City and hopefully *all* citizens of Chicago will be more understanding in the future should a similar situation arise.

OVERDUE PARKING NOTICE

(Office of Mayor, Saint Paul—R. H.—April 25, 1979)

We have no program called "Diamond Jubilee Day," a one day open court where warranted non-moving violations are paid at the original fine.

In Chicago, notices are sent for overdue parking tickets with \$3.00 additional cost.

WRONGFUL TOWING OF AUTOS ON PUBLIC WAY

(J. B.—B. R.—November 28, 1979)

Your letter of September 28, 1979 addressed to Honorable Mayor Jane M. Byrne has been referred to the writer for reply. Kindly be advised that we are unaware that either the City of Chicago or the Chicago Board of Education have authorized any private towing company, including Lincoln Towing Company or Phillips Towing, Inc., to remove private automobiles from their respective public ways or properties.

The activities of private towing companies are currently regulated by the Illinois Commerce Commission. We are forwarding your letter together with a copy of your towing bill to the Commission for appropriate investigation and resolution. Should the Commission determine that your vehicle was unlawfully towed, it is our opinion that you would be entitled to a refund of the \$35.00 towing fee and a letter of apology from Phillips Towing, Inc.

If you desire to be apprised of the status of your complaint to the Commission, you may write or telephone the following party:

Illinois Commerce Commission
160 North LaSalle Street
Room 29, 19th Floor
Chicago, Illinois, 60601
Attention: Law Enforcement, Motor Carrier Division
(312) 793-2862

SIGN DISPLAY REQUIREMENT— AUTO TOWING

(F. J. D.—B. R.—December 27, 1979)

Your letter of December 3, 1979 addressed to Honorable Mayor Jane M. Byrne has been referred to the writer for reply. Kindly be advised that the activities of private towing companies, such as Pioneer Towing Company, are currently regulated by the Illinois Commerce Commission.

The Commission's General Order No. 1 requires the prominent display of signs with letters not less than three inches in height indicating that unauth-

orized vehicles shall be subject to towing. From a reading of your letter, it would seem that the aforesaid requirement was violated by Pioneer Towing Company.

We are forwarding your letter to the Illinois Commerce Commission for appropriate investigation and resolution. If you desire to be apprised of the status of the said Commission investigation, you may write or telephone the following party: Illinois Commerce Commission, 160 N. LaSalle Street, Room 29, 19th floor, Chicago, Illinois, 60601, attention Law Enforcement, Motor Carrier Division, (312) 793-2862.

CHAPTER X—FINANCE

Section A. APPROPRIATIONS AND TAXES

TAX ANTICIPATION NOTES

(Chicago Attorney—R. L. C.—January 3, 1974)

During our phone conversation yesterday, you indicated that without a specific enabling ordinance, you would be unable to approve tax anticipation notes issued by the City of Chicago pledging its full faith and credit for any amounts in excess of 75% of tax receipts anticipated from real or personal property only.

This position ignores completely the three year program of this administration to generate revenue from sources other than the traditional real estate tax. Specific nonproperty taxes have been enacted by the City Council and approved by the Illinois Supreme Court relating to both cigarettes and parking garages. Additional nonproperty taxes have been enacted concurrently with the 1974 budget covering such miscellaneous taxes as Employers' Expense, hotel accommodations, electric distribution, leasing personal property and real estate transfers. To the extent that any tax is under attack or lacking in judicial support, I concur in your conclusion. However, for those matters which have been approved by the Illinois Supreme Court, I believe your position to be questionable.

The certainty of collection and the accuracy of anticipated revenue estimates from sources *other than* real estate property are as sound as those involving real estate taxes. The ability of the City to pledge these amounts in payment of tax anticipation notes is certainly within the power of a home rule unit.

You indicated, without elaboration, that the technical statutory reason upon which you based your conclusions can be remedied by a simple ordinance amendment. Inasmuch as the City of Chicago anticipates selling tax anticipation notes early in 1974, I would urge your early attention to the type of ordinance which you believe would serve to overcome the present difficulties.

I would suggest that Section 8-4-25 of the Illinois Municipal Code 1961 be adopted with slight variations as a municipal ordinance under Chicago home rule powers, that its language be broadened in such a fashion as to provide the authorization which you feel is lacking for a pledge of tax receipts from sources other than real estate.

Soliciting your early attention to this matter, I remain

MESSAGE TAX IMPOSED ON TELEPHONE COMPANY

(CTA Attorney—B. R.—February 11, 1974)

You inquired of the writer whether the City's message tax is imposed upon the telephone subscriber such as the Chicago Transit Authority. It is the writer's opinion that the municipal message tax is an occupation tax imposed upon

Illinois Bell and not imposed upon telephone subscribers. *Agron v. Illinois Bell*, 449 F2d 906 (7th Cir. 1971) Illinois Bell may recover the cost of these message taxes, pursuant to 36a of the Public Utilities Act (Chap. 111 2/3, Ill. Rev. Stat., 1971), without the necessity of filing a formal rate proceeding with the Illinois Commerce Commission.

In other words, Illinois Bell receives reimbursement of the municipal message tax cost of service item through an automatic adjustment clause which is a tariff provision on file with the Illinois Commerce Commission. It should be noted that Illinois Bell makes the message tax charge to the City of Chicago like any other telephone subscriber.

CONSTITUTIONALITY OF EMPLOYER'S EXPENSE TAX ORDINANCE

(*City Council Member—R. R.*
July 8, 1974)

On July 1, 1974 the Illinois Supreme Court announced its decision upholding the Chicago Employers' Expense Tax Ordinance provided by ch. 200.2 of the Municipal Code of Chicago. Four separate actions challenging the constitutionality of the ordinance were consolidated in the Circuit Court of Cook County. The Circuit Court held all provisions of the ordinance valid except section 200.3-1H which defines "full-time employee." Plaintiffs appealed from the judgment of the Circuit Court and the City of Chicago cross-appealed from that portion of the decision holding section 200.3-1H invalid. Direct appeal was taken to the Illinois Supreme Court pursuant to that Court's determination that the public interest required prompt adjudication.

The Supreme Court found without merit the plaintiffs' contention that the ordinance imposed a tax "upon occupations" in violation of section 6(e) of Article VII of the Illinois Constitution of 1970. The Court noted that section 6(m) of Article VII of the Constitution provides that the "powers and functions of home rule units shall be construed liberally" and concluded that the tax imposed is not within the constitutional proscription of an "occupation tax" as that term has been construed in Illinois. The Court also rejected contentions that the several exemptions from the tax specified by the ordinance deny equal protection of the laws; that certain sections of the ordinance are violative of section 6(e) of Article VII of the Constitution in that they have the attributes of providing for a license for revenue; that certain classifications of employees in section 200.3-1G are discriminatory and lacking in uniformity; that the ordinance unlawfully delegates legislative authority in incorporating by reference certain provisions of Illinois Statutes; and that the ordinance unlawfully delegates power to the Director of Revenue to impose penalties and to make rules. The Court accepted the plaintiffs' argument that section 200.3-9B which provides for review of decisions of the Director of Revenue pursuant to the Illinois Administrative Review Act is invalid because the City is without power to fix the method of such review. The Court declared, however, that section 200.3-9B is severable and that its invalidity does not affect the remainder of the ordinance.

The City on cross-appeal argued that section 200.3-1H states a clear and unambiguous definition of a class designated "full-time employees." The Supreme Court accepted the City's argument and reversed the ruling of the Circuit Court which had held that section of the ordinance unconstitutional.

A copy of the opinion of the Court is enclosed.

NO EXEMPTIONS FROM STATE AND MUNICIPAL UTILITY TAXES

*(Acting Commissioner, Department of Water and Sewers—
B. R.—September 5, 1974)*

You have requested an opinion from this office concerning the lawfulness of State and City utility taxes being applied to bills for utility services provided to the Department of Water and Sewers.

The municipal utility taxes are provided for in Chapter 24, Section 8-11-2 (Ill. Rev. Stat., 1973). This legislation enables municipalities of the State of Illinois to impose an occupation tax on the transmitting of messages by electricity, gas, electric and water utilities at a rate not to exceed 5% of gross receipts. Chicago has enacted ordinances imposing said occupation taxes; Section 132-4 for gas, Section 132-17 for electric and Section 132-30 for transmitting messages by electricity. Neither the State enabling legislation nor Chicago's ordinances authorize exemptions for any person or business, private or public, from the aforesaid occupation taxes.

The State utility taxes are also occupation taxes containing no exemptions. They are found in Chapter 120 (Ill. Rev. Stat. 1973); Section 467.2 for transmission of messages by electricity, Section 467.17 for gas and Section 469 for electric.

Pursuant to Section 36 of the Public Utilities Act (Chap. 111 2/3, Ill. Rev. Stat., 1973), public utilities are permitted to pass on to their consumers the State (Section 36 (b)) and the City (Section 36 (a)) utility occupation taxes. Once again, there are no exemptions from this pass-along of utility occupation taxes.

Since the City and State utility taxes are occupation taxes, *Agron v. Illinois Bell Telephone Company* 449 F2d 906 (7th Cir., 1971), containing no exemptions, it is the writer's legal opinion that the Department of Water and Sewers is subject to the aforesaid utility taxes.

UNPAID TAXES—MISTAKEN ADDRESSEE

*(City Treasurer, Pittsburgh—F. G. S.—
October 22, 1974)*

At the suggestion of Mr. Rocco Ciocca of your office, in a telephone conversation held this date, I am returning the enclosed Statement for Unpaid Taxes, and Final Notice Prior to Lien, for property located at 7120 Hermitage Street in Pittsburgh, Pennsylvania, showing ownership thereof in the name of Lenora V. Pearl.

Both the statement and notice, for reasons Mr. Ciocca could not explain show the name of Hon. Richard Daley, 600 S. Lowe Avenue.

I would appreciate your advising me as to why the name of Hon Richard Daley appears in your files in connection with this property, or removing same from the records if there has been some error in placing it thereon.

I look forward to your early reply either advising the reason for the name being on this file, or confirmation that it has been removed therefrom.

PRIORITY OF EMPLOYER'S EXPENSE TAX IN BANKRUPTCY PROCEEDINGS

*(Director, Department of Revenue—R. O.—
February 27, 1975)*

This letter is in response to an inquiry from your office regarding bankruptcy proceedings, and the filing of proofs of claim based upon the failure of the bankrupt to pay the Employer's Expense Tax. It is our opinion that your office may prepare and file these proofs of claim without approval from our office. Enclosed is a proof of claim form which should be used for these claims. They can be filed personally or by mail:

Clerk of the United States District Court
219 South Dearborn Street
Chicago, Illinois 60604

The Employer's Expense Tax, as a tax which is legally due and payable by the bankrupt to the City of Chicago, is a debt which has priority and is to be paid in full and in advance of certain other debts. Therefore, it is important that the proof of claim indicate priority.

Proofs of claim, by law, are to be filed within six months after the date set for the first meeting of creditors (which usually occurs within 30 days after the bankruptcy petition is filed). However, extensions of time can be requested, and, in practice, proofs of claim can be filed at any time prior to final accounting and distribution.

At the meetings of creditors, claims are allowed or disallowed. Creditors whose claims are allowed then receive written notification of further proceedings, including the manner and time of distribution of the assets. Therefore, it is not imperative that a creditor attend these meetings.

Finally, it should be noted that a discharge in bankruptcy does not release a debtor from payment of taxes, including the Employer's Expense Tax. Therefore, if the bankrupt continues in business, he will still owe the City of Chicago the amount due for the Employer's Expense Tax.

If any problem arises in connection with these claims, please notify our office.

FEDERAL EMPLOYEES TAX EXEMPTION

*(Director, Department of Revenue—D. P.—
May 15, 1975)*

Your letter to the Corporation Counsel asking for an opinion as to the validity of the assertion by the Federal Savings and Loan Insurance Corporation d/b/a the Southwest Inn that they are exempt from the Chicago Employer's Expense Tax has been referred to me for answer.

The attorneys for the Federal Savings and Loan Insurance Corporation represent their clients as the operators of the Southwest Inn and claim that the employees of the Southwest Inn are therefore not subject to the Expense Tax because Section 200.3-16(6) provides an exemption for employees of any unit of the federal government.

The ordinance exempts only employees who are in fact serving in the employ of the federal government. Evidence of such status would include a Government Service Administration rating, pay checks issued by some unit of the federal government, and benefits normally received by employees of the federal government. I suggest you request evidence of such a nature from the Federal Savings and Loan Insurance Corporation with regard to these employees. Absent such evidence, the exemption granted by Section 200.3-16(6) does not apply.

The Federal Savings and Loan Insurance Corporation also cites language from Title 12 USC § 1725(e) to support the proposition that the Southwest Inn is not subject to local taxation. The language in § 1725(e) raises the question of the nature of the relationship between the Southwest Inn and the Federal Savings and Loan Insurance Corporation. It is easy to surmise that the Federal Savings and Loan Insurance Corporation is acting as a receiver, trustee in bankruptcy or in some similar capacity. In that case, it is doubtful that the Federal Savings and Loan Insurance Corporation could contend that the profits of the Southwest Inn are income to the Federal Savings and Loan Insurance Corporation. Even if the Federal Savings and Loan Insurance Corporation holds title to the building as trustee, the beneficial use of that property belongs to some other party or parties (perhaps the Inn's creditors).

However, this is speculation. It is suggested that you inquire into the manner in which the Federal Savings and Loan Insurance Corporation owns or holds title to the Southwest Inn. Unless there is a showing that the Federal Savings and Loan Insurance Corporation owns and operates the Southwest Inn for its own benefit the exemption granted by Title 12 USC § 1725(e) does not apply.

APPLICABILITY OF EMPLOYER'S EXPENSE TAX TO CITY CONTRACTORS EMPLOYEES

(*J. R. C.—D. P.—July 31, 1975*)

This is in response to your request of May 7, 1975 for an opinion of the Corporation Counsel on the question of whether the Willett Company is exempt from payment of the Employers' Expense Tax in connection with its employees working on its contract with the Chicago Board of Education.

It is the conclusion of the Corporation Counsel that the Willett Company is not exempt from the payment of the tax. Section 200.3-1 B. 6. of the Municipal Code of Chicago provides:

G. Employee. The term "Employee" shall mean and include any individual permitted to work for remuneration by any employer in any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit, or advantages whether direct or indirect, to the taxpayer or to another or others. For purposes of this Chapter, said term excludes any individual performing:

* * * *

6. Services in the employ of any governmental unit, including federal, state or local political subdivisions.

The individual employees here in question, although performing services which ultimately benefit the Board of Education, are not employees of any govern-

mental unit. Rather, they are employees of the Willett Company which is under contract to the Board of Education. The language of the ordinance cannot be construed to exempt such private employers regardless of the fact that they perform services for a public entity.

Nor do we believe that the decision in *State Toll Highway Commission v. Korzen*, 32 Ill. 2d 338 (1965), which you have called to our attention, provides a persuasive basis for a contrary conclusion. The Supreme Court in construing the Toll Highway Act concluded that language stating that "all property belonging to the commission" was tax exempt, required the exemption of cases even though leased to private operations. The exemption specified in Section 200.3-1 G. 6. appears only to include employees directly employed by a governmental unit.

Finally, we cannot concur with your suggestion that the fact that the Board's contract with Willett includes an escalator clause allowing the company increased payment as a consequence of its liability for the tax results in the city doing indirectly that which the ordinance forbids to be done directly. Presumably many employers will seek to adjust their prices or charges as a consequence of new or increased tax liabilities, regardless of whether they do business with a public entity or whether they work under a contract which includes an escalator clause. However, Section 200.3-2 of the ordinance makes it clear that the incidence of the tax is upon the employer. The employer in this instance is the Willett Company, not the Board of Education.

CORPORATION RESIDENCE—LIABILITY FOR WHEEL TAX

(J. D. M.—J. A. S.—February 27, 1976)

This letter is in response to your inquiry regarding the liability of a corporation under the Chicago Wheel Tax Ordinance for vehicles supplied to employees residing beyond the corporate limits of Chicago. The Chicago Wheel Tax is assessed upon the owner of a vehicle if that owner is a resident of the City of Chicago. In the case of a corporation, residence depends on the significance of the corporation's operations within the City.

If your client is a resident of the City of Chicago, then it must obtain Chicago Vehicle Tax stickers for each of its vehicles. Chapter 29, section 29-2 of the Municipal Code of Chicago states:

It shall be unlawful for any motor vehicle owner residing within the city to use, or to permit any of his agents, employees . . . to use, any motor vehicle upon the public ways of the city, unless such vehicle be licensed. . . .

* * * *

No person residing within the city shall be exempt from the operation of this chapter, or released from the payment of the license fee required by reason of the registering of an automobile or other vehicle in a municipality other than the City of Chicago. . . .

This section makes it clear that the residence of the driver is irrelevant if the owner of the vehicle resides in the City and if the vehicle is used at any time within the City of Chicago. It is therefore our opinion that your client as owner of vehicles given to employees is liable for the Wheel Tax on those vehicles.

LIABILITY FOR TRANSACTION TAX BY BENEFICIAL OWNER

(Attorney,—R. F. F.—March 29, 1977)

Mr. Kenneth R. Rosenberg of the Department of Revenue of the City of Chicago has forwarded to us your letter of May 28, 1976 written by Mr. James A. Carney concerning the Transaction Tax paid upon the sale of the real estate located at 100 E. Bellevue Place. At a later date, we also received copies of documents concerning this transaction which were referred to in your letter. For the purpose of our answer, we take the representations contained in your letter as being the fact.

Your letter states that your client, Mr. Richard M. Barancik, is the beneficial owner of real property held in trust by LaSalle National Bank as trustee under a trust agreement dated July 29, 1975 and known as Trust No. 49125. LaSalle National Bank purchased the property on December 16, 1975 from James Bloor, as reorganization trustee for the former owner, a debtor in proceedings under Chapter X of the Bankruptcy Act. You state that the purchaser paid the City of Chicago Transaction Tax (Municipal Code of Chicago, Chapter 200.1) in an amount of \$10,700.00, which indicates a purchase price of approximately \$7,133,000. Your letter states three grounds supporting your argument that the purchase should be subject to no City of Chicago Transaction Tax, or alternatively, a reduced tax.

We have reviewed your detailed letter and have considered your arguments fully, but we regret that we must affirm that the amount of tax paid at the time of the original transaction was correct.

Before responding to the arguments raised, it must be noted that the proper procedure was not followed in seeking a refund. No protest was ever made prior to or at the time of paying the Chicago Transaction Tax. Under a principle of long standing, a tax, even though paid erroneously, may not be refunded if paid voluntarily and without protest. Since, from all appearances, the present tax was paid voluntarily and without protest, no refund may be sought now.

Moreover, the procedure for the refund of erroneously paid taxes set forth in the Transaction Tax ordinance was not followed in the present case. Ignoring for the moment the technical problem that Mr. Barancik is only the beneficial owner of the property and does not appear to have express authorization from the legal title holder, LaSalle National Bank, to apply for a refund, neither Mr. Barancik nor LaSalle National Bank are the proper persons to apply for refund pursuant to the procedures established by section 200.1-8 of the Municipal Code. That section requires that the person collecting and remitting the tax—the vendor—be the one who applies for the refund. Section 200.1-8 states that a person “who is required or authorized to collect and remit such transaction tax . . . may file a claim for credit with the Department of Revenue . . .” The Illinois Appellate Court has interpreted the language contained in this section as meaning that only the vendor may make application for a refund. *Williams v. City of Chicago*, 36 Ill. App. 3d 216, 219 (1976). (This case is presently upon appeal in the Illinois Supreme Court, No. 48399; however, no issue with regard to section 200.1-8 was raised in that court.)

Accordingly, since no protest of any kind was registered by any person at the time the tax was paid, and since neither the LaSalle National Bank, as vendee, nor Mr. Barancik as the beneficial owner, are persons entitled to seek

a refund pursuant to the refund section of the ordinance, the owner is not entitled, on procedural grounds, to a refund of the taxes that were paid.

Turning next to the merits of Mr. Barancik's claims, it is first suggested that the subject transaction comes within one of the exceptions contained in the ordinance. Section 200.1-4B of the ordinance exempts from taxation transfers

5. From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee or from such trustee to such receiver, nor [sic] upon redelivery or retransfer by any such transferee or successor thereto.

It is claimed that the present transaction was such a "retransfer." The vendor in this instance was James Bloor, as reorganization trustee of and successor to Invesco Holding Corp. The reorganization trustee, in turn, "retransferred," it is claimed, the subject property to the present owner.

An examination of the language as well as the intent of section 200.1-4B5 indicates that the present transaction is not exempt. The transactions named in that subsection are those contemplated to facilitate transfers and retransfers among bankrupts, reorganization trustees and receivers, pursuant to the bankruptcy and reorganization laws. These are nominal transactions only, with the trustee or receiver acting for the bankrupt or person in receivership.

The present transaction was not one of those nominal transfers made during the pendency of or to facilitate such proceedings, but appears to be an arms length sale from the trustee to the new owner. This was a transfer for value and was not a nominal transaction.

An examination of the other subparagraphs of this section confirms that only those transactions which could be considered nominal or which occur by operation of law are exempt transactions; transfers for value are taxable.

The owner's second argument is that the transaction should not be taxed for the full consideration, but only for the cash consideration. It is stated that the present owner paid only \$391,983 cash consideration for the subject property, with the remaining amount representing mortgages upon the property for which, it is stated, Mr. Barancik, as beneficiary of the trust, is not *personally* liable.

It should be noted that the purchaser-beneficiary, as you state, took the property subject to the mortgages, and the mortgagees still may look to the real estate for repayment of the loans which the mortgages secure. Thus, the full consideration of the property was the cash down payment plus the assumption of the obligations to repay the loans represented by the mortgages.

The full consideration for the transaction is stated in the real estate declaration filed for the purpose of Illinois Real Estate Transfer Tax. In this declaration signed by representatives of both the buyer and the seller, it is stated that the "full actual consideration" of the property is \$7,147,041.47. While under state law, the amount of the purchase money mortgages (approximately \$6.7 million) may be exempt from the state transfer tax, there is no similar provision in the City of Chicago Transaction Tax ordinance.

The Chicago Transaction Tax states in various terms that the full consideration is the amount that is taxed. Section 200.1-2B states that the tax is due upon the "transaction amount." This is the "real property transfer price" (Section 200.1-2B1). Moreover, the declaration which must be filed with the Director of Revenue requires that "the full consideration for the property so transferred" shall be stated. Section 200.1-2B4. But most important, the ordinance

expressly provides that it makes no difference whether the real estate is encumbered by a mortgage. Section 200.1-2B states that a transaction is taxable "whether investing the owner with the beneficial interest or legal title to said real property . . . or to secure future payment of money or the future transfer of any such real property." Further the ordinance contains no exception applicable if the beneficial owner happens not to be personally liable upon the loans secured by the mortgage.

The parties to the sale, themselves, considered that the full consideration included the amount of the mortgages. The contract to convey the present property, paragraph 2, states the purchase price, which "shall be \$550,000 over and above the unpaid principal indebtedness secured at the time of closing of title by the following mortgages [thereafter setting forth the mortgage amounts in question]." Therefore the contract for conveyance, as well, demonstrates that the amount of the mortgages was considered to be included in the full consideration for the transfer.

The third argument advanced to support the theory that part of the tax was erroneously paid is based upon Mr. Barancik's interest in the subject property predating the instant transfer. It is argued that Mr. Barancik did not acquire the full fee of the real property in the instant transaction and therefore the full amount of the transaction is not taxable.

Prior to the acquisition from James Bloor, Mr. Barancik was the owner of a 99-year ground lease of the subject property as well as the owner of the improvements. The deed conveying the property notes that the real estate, but not the improvement, is transferred to the vendee, and that the real estate is taken subject to the existing lease. The contract of conveyance states substantially the same thing. Nevertheless, the Illinois State Real Estate Transfer Tax declaration filed on behalf of Mr. Barancik states that the "full actual consideration" for the conveyance was \$7,147,041.47. The declaration is consistent with the contract of conveyance, which recites that consideration for the transfer includes cash plus the assumption of the mortgages. Therefore, although the transfer was subject to the existing 99-year lease and subject to the ownership of the improvement on the land, nevertheless the parties stated that consideration for this transfer was \$7,147,041.47. This is the "transaction amount" upon which the proper tax was paid at the time the deed was recorded.

For the reasons stated above, the present owner is unable to claim a refund, and moreover, upon consideration of the merits, the taxes were, in fact, not erroneously paid.

REFUND OF EMPLOYER'S EXPENSE TAX

(City Comptroller—R. R.—August 10, 1977)

This letter is in response to your request of July 5, 1977, for advice in connection with the refunding of employers' expense tax payments to certain insurance company taxpayers and compensation for the City's administrative costs in managing the protest fund.

As you correctly observed in your letter the taxes paid into the protest fund by the twenty-two plaintiff companies, plus all accumulated earnings, are to be refunded. All steps necessary to effect the refund should be completed at the earliest date practicable.

With respect to employers' expense taxes paid by insurance companies who were not named plaintiffs in either of the circuit court challenges of the tax and thus did not pay into a protest fund pursuant to a specific court order our conclusion is that refunds will not be made. Our research of the law indicates that only plaintiffs in these lawsuits are definitely entitled to refunds and that neither payment under protest, voluntary taxpayer requests that their tax payments be held in a protest fund, nor subsequent demands for return of taxes paid should entitle taxpayers to a refund.

Illinois courts have repeatedly held that in the absence of a specific statutory provision to the contrary, taxing authorities have no power to refund illegal taxes not paid under duress. See, for example, *Bank and Trust Co. of Arlington Heights v. Cullerton*, 25 Ill. App. 3d 721 (1975), and *Scoa Industries Inc., v. Howlett*, 33 Ill. App. 3d 90 (1975). Section 200.3-8 of the Municipal Code does provide for the refund of "an amount of tax paid in error . . . whether such amount be paid through a mistake of fact or an error of law." We believe, however, that this section provides a remedy only for computational errors resulting in payment of an excessive amount but does not apply to questions of taxpayer liability. We also believe that these payments were not made under duress. Payment is deemed to have been under duress only if there is some actual or threatened exercise of power by the taxing authority over the person or property of the taxpayer from which the taxpayer can gain relief only by payment of the tax.

With respect to your inquiry concerning compensation for the city's administrative costs arising out of the protest fund, its investment and its refund our conclusion is that the City must bear all expenses without recourse against the fund. The order establishing the protest fund made no provision for administrative costs and the terms of the order by implication appear to exclude compensation.

VACATION OF INJUNCTION FOR SEGREGATED TAX FUNDS—REAL PROPERTY TRANSFER TAX

(Director, Department of Revenue—R. F. F.—
December 14, 1977)

On September 2, 1975, the Circuit Court of Cook County entered orders requiring that tax payments collected pursuant to Chapter 200.1, Section 200.1-2B of the Municipal Code pertaining to the real property transfer tax be retained in a segregated fund until further order of the court.

We have now successfully completed our defense in this case. The Illinois Supreme Court upheld the validity of the real property transfer taxes contained in Chapter 200.1, Section 200.1-2B. The United States Supreme Court denied certiorari and declined to hear the case. Pursuant to the judgment of the Illinois Supreme Court, the Circuit Court of Cook County on November 22 vacated the injunction referred to above and entered judgment for the City of Chicago.

Accordingly, as of today, tax revenues received from the real property transfer tax pursuant to Chapter 200.1 of the Municipal Code need no longer be retained in a segregated fund; they may be allocated to general revenue accounts as received. Moreover, the segregated fund which had been established pursuant to the courts' orders need no longer be retained; all funds in this account received from the real property transfer tax may be similarly expended.

RELEASE OF SEGREGATED TAX FUNDS

*(Director, Department of Revenue—R. F. F.—
December 14, 1977)*

On May 14, 1976, the court in the above case entered an order requiring the City Director of Revenue and the City Comptroller to maintain in a segregated fund all monies received pursuant to the Transmission of Messages by Electricity Ordinance (Municipal Code of Chicago, Chapter 132, section 132-35).

The court has now vacated that order, dismissed the complaint and entered judgment for the City of Chicago. The court's judgment was entered December 7, 1977, effective seven days thereafter. Seven days have now passed; the court's order is effective, the segregated fund need no longer be maintained and monies in the fund may be released.

RETAILER'S OCCUPATION TAX EXEMPTION

*(A. N., Department of Revenue—M. J. H.—
December 13, 1978)*

The purpose of this letter is to request an exemption for the National Institute of Municipal Law Officers (NIMLO) from the Illinois Retailer's Occupation Tax pursuant to Ill. Rev. Stat. 1977 Ch. 120 § 441 (2)(b) which provides proceeds of sales to any government body shall be exempt from such tax.

NIMLO is a non-profit organization, owned entirely by municipalities, whose members consist of governments, and whose receipts are paid by cities. Its primary purpose is to provide a forum for municipal attorneys to offer and solicit ideas, thoughts and support from each other on their pending municipal law problems.

The organization conducted its yearly conference at the Radisson Chicago Hotel this past October. As the attached letter indicates, the Radisson is requesting a letter from your Department indicating that NIMLO is in fact exempt from the State's sales tax so that they can compute the appropriate adjustments to NIMLO's account.

We believe that NIMLO organization falls within the above cited exemption to the Retailer's Occupation Tax Act, request that such exemption be granted and that the appropriate notice be forwarded to us and to the Radisson Chicago Hotel, 505 North Michigan Avenue, Chicago, Illinois, 60611.

Your prompt attention to this matter would be most appreciated. If further information is needed, please feel free to contact me at 744-6907.

EXEMPTION FROM RETAILER'S OCCUPATION TAX

*(Department of Revenue—M. J. H.—
February 9, 1979)*

The purpose of this letter is to request that the National Institute of Municipal Law Officers (NIMLO) be granted an official exemption from pay-

ment of the Illinois Retailers' Occupation Tax. This request is being made pursuant to *Ill. Rev. Stat. 1977, Ch. 120 § 441 (2)(b)*, which provides that proceeds of sales to any governmental body shall be exempt from such tax.

As per our conversation, I am enclosing a copy of NIMLO's Constitution. Article II, Section 1, provides in pertinent part that:

"All municipalities acting through their chief legal officer by whatever title he may be designated, shall be eligible for membership in this organization, and may become members thereof upon payment of the fees established. . . ." (Emphasis added)

Since NIMLO is a non-profit organization which is owned entirely by municipalities, whose members consist of municipalities, and whose receipts are paid by municipalities, we believe that such organization falls within the above-cited exemption to the Retailers' Occupation Tax Act and accordingly request that such exemption be granted.

Should you decide to grant such exemption please send the official notification to:

NIMLO
Suite 800
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

and kindly forward a copy of your decision to our office.

Your prompt attention to this matter will be greatly appreciated. If you need further information, please feel free to contact me at 744-6906.

GOVERNMENT LIABILITY FOR EMPLOYER'S EXPENSE TAX

*(Administrator, Attorney Registration and Disciplinary
Commission—R. L. A.—February 23, 1979)*

We wish to acknowledge receipt of your letter addressed to Mr. William R. Quinlan, Corporation Counsel of the City of Chicago, in which you request an opinion as to whether the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois is liable for payment of the Chicago Employers' Expense Tax.

Please be informed that Chapter 200.3 of the Municipal Code of the City of Chicago, entitled Chicago Employers' Expense Tax Ordinance, Sections 200.3-1 G (4) and 200.3-1 G (6), provides in pertinent part, as follows:

- G. Employee. The term "Employee" . . . [E]xcludes any individual performing:
4. Services in the employ of a not-for-profit organization and any organization described in Section 501(c), 501(d) or 401(a) Title 26 of the United States Code as qualified by Sections 502 and 503 of said Title 26, unless such organization normally, annually, receives unrelated business income in excess of fifty percent (50%) of its total income. For purposes of this ordinance, unrelated income shall have the meanings set forth in Sections 511, 512, 513, 514 and 515 of Title 26 of the United States Code.
6. Services in the employ of any governmental unit, including federal, state or local-political subdivisions.

We are of the opinion that employees performing the types of services set forth in Sections 200.3-1 G (4) and 200.3-1 G (6), above, are not subject to the Chicago Employers' Expense Tax Ordinance. Therefore, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois is not liable for payment of the Chicago Employers' Expense Tax.

COUNTY TAXATION OF LEASEHOLD INTERESTS

*(Chicago Title Insurance Co.,—E. L. N.—
December 12, 1979)*

In your preliminary commitment for title insurance 67-33-522, you indicate as an objection that the Cook County assessor has assessed "leasehold interests" on the property identified as permanent index numbers 17-16-200-020-8001 and 17-16-200-020-8002 from 1970 through 1978.

The property was acquired by the City of Chicago in 1953 and since said date to the present has been municipally owned and used solely for municipal purposes (parking sites).

In the application of Rosewell, County Collector, vs. City of Chicago (69 Ill. App³ 996) the attempt by the county collector to establish leasehold interests in the downtown parking garage sites was denied on the ground the agreements between the City and the operators were management contracts. It has also been held that where a leasehold is taxed—it does not extend to the exempt fee estate. *Karzen v. American Air Lines* (39 Ill.2 11).

The City intends to file a tax injunction suit to establish its exemption for the entire parcel, including the permanent tax numbers herein involved, for the tax years from 1970 to the date it completes the sale of said property.

In any event the City will indemnify and hold harmless the Chicago Title Insurance Co. for any costs inuring to it by reason of its waiving its objections covering said permanent tax numbers from 1970 to the present date.

Section B. MANAGEMENT OF CITY FUNDS

FUND RETENTION—PERCENTAGE BASED ON ORIGINAL WORK

*(Acting Commissioner of Public Works—
R. L. H.—June 18, 1974)*

We have reviewed your letter of June 7, 1974, wherein you request our opinion regarding Kenny Construction Company's request for reduction of retention in the above entitled project from 5% to 2%.

Please be advised that the contract documents provide for certain retention for reserve pursuant to Section 26-13 of the Municipal Code of Chicago, which reads, in part, as follows:

"... 10% of each monthly payment estimate covering 50% of the work shall be held until completion of the work covered by the contract;

Upon completion of the work and prior to computation of final quantities, 2% of the total amount of the contract shall be retained out of said aforementioned reserve, and the balance released to the contractor;

Upon computation of the final quantities of work, said retained 2% shall be paid in final payment."

Your letter refers to the "work on the contract" being 99.8% complete and also refers to extras of some \$300,000 being added unilaterally by the City. A clarification of your letter is required to advise whether the 99.8% refers to the "original work on the contract" or the "work on the contract including the extras."

In the event the "original" work on the contract is 100% complete we would approve reduction of the retention on said work subject to the contractor submitting to you full waivers from all material men and an affidavit listing the amounts of monies owed to all subcontractors. In addition, written approval from the surety on the performance bond would be required.

Since your letter indicates a commitment from the contractor to pass on any benefit received to his subcontractors, we would require that evidence be submitted to you that all subcontractors received an unconditional reduction of their retention to 2% within 10 days of the payment to the contractor.

If we can be of any further service to you in this matter, please advise.

RELEASE OF TAX LEVY FOR PAYMENT OF LIEN CLAIMS

(Assistant United States Attorney—R. L. H.—

August 7, 1974)

Sometime ago I spoke with you regarding the possibility of the Internal Revenue Service releasing its Notice of Levy filed with Ruby Construction Co., on September 1, 1971, and your recent phone call requested a review of the background of this matter so that you may properly discuss same with the Internal Revenue Service.

Ruby Construction Company entered into a contract with the City of Chicago in 1969 or 1970 for the construction of a fire station at 605 W. Armitage Avenue, said contract being known as City of Chicago Contract No. 31443. Among the many subcontractors utilized by Ruby, the general contractor, was Allcoustic, Inc. who, in turn, utilized the services of Dworak Lathing and Fester Plastering as its subcontractors.

At the time the construction work was fully completed and accepted by the City, the City was in receipt of Notices of Claim for Lien against Public Funds pursuant to Chapter 82, Section 23, Illinois Revised Statutes from Dworak Lathing in the sum of \$1,800.00; from Fester Plastering in the sum of \$5,100.00; and from Allcoustic, Inc. in the sum of \$8,135.00. Since the claim of Allcoustic included the claims of its two subcontractors, the City retained the sum of \$8,135.00 from monies due to Ruby, the general contractor, pursuant to the aforesaid statute, and awaited instructions to release said funds when waivers of lien were received.

Attempts were made on numerous occasions to have the waivers of lien

deposited with the undersigned in a form of escrow and payments to all three claimants would then be made through the undersigned. For some unknown reasons it was impossible to obtain waivers from all three claimants such that the attempts to resolve the problem were fruitless.

At the time of final payment to the general contractor then, all subcontractors, their subcontractors and materialmen except the aforementioned three had been paid in full and final payment was made to the said Ruby Construction Company of all monies due to him except the \$8,135.00 held for the aforementioned lien claims.

Ruby, around this time, was also served with the Internal Revenue Service Notice of Levy in the sum of \$2,953.35 for monies due and owing by Allcoustic.

Allcoustic has now filed for bankruptcy and Gerald P. Grace has been appointed Trustee. The Trustee's attorneys, Ahern and Gillogly, have now obtained waivers of lien from both Fester Plastering and Dworak Lathing and the Trustee has executed a waiver in behalf of Allcoustic. The Trustee is now requesting that the monies withheld be delivered to him for distribution to the two subcontractors with the balance remaining in the bankrupt's estate.

Ruby Construction Company, the general contractor, has opposition to the funds being released to Allcoustic's Trustee although there is no question that this sum is owed to Allcoustic and its two subcontractors. The opposition is based upon possible liability on their part pursuant to the IRS Levy if they pay out money to Allcoustic without honoring the said Levy. Since the City of Chicago's check is payable to Ruby and they would be endorsing said check over to Allcoustic's Trustee in Bankruptcy, Ruby would in fact be paying money over to Allcoustic in contravention of the aforesaid Levy.

There is no question that both Dworak and Fester are entitled to monies earned by them quite some time ago and it is the intention of the City of Chicago that they be paid and we are attempting again to try and get payment to them. Since there is really only \$1,235.00 solely owed to Allcoustic (over and above the monies due to Dworak and Fester), there is no way possible to both pay these two subcontractors and honor the Tax Levy.

Since the U.S. Attorney's office is a party to the Bankruptcy proceeding in behalf of the claims of the Internal Revenue Service, we would think it would be only equitable and proper for IRS to release its levy with Ruby in order to allow the City to release these withheld funds to the Trustee in turn to release the funds owed to the two subcontractors who have been waiting patiently for their money for three years.

Your cooperation in this matter would be sincerely appreciated.

POLICE BOARD BUDGET POWER

*(President, Police Board—R. L. C.—
September 12, 1974)*

Your recent letter again directed our attention to the question of whether or not the budgetary activities of the Chicago Police Board are subject to the Illinois Meetings of Public Agencies Act. It is our opinion that our answer to this question is negative, for the reasons set out below.

The statutes creating the Chicago Police Board (Ill. Rev. Stat. 1973, ch. 24, § 3-7-3.1) provide that the board shall have the power to "... 3. Review,

approve, submit to the budget director of the city the annual budget of the police department."

The "budget" of the Police Department considered by the Police Board consists merely of *tentative budgetary estimates* for the reason that only the City Council can adopt the actual budget of the city or of any of its departments. Ill. Rev. Stat. 1973, ch. 24, § 3-11-17, provides that appropriation of money requires the concurrence of a majority of all the members of the City Council, including the Mayor. A veto by the Mayor may be overridden by a vote of two-thirds of the members of the City Council. Ill. Rev. Stat. 1973, ch. 24 § 3-11-18.

The preparation of a budgetary recommendation for submission to the City Council is the responsibility of the Mayor. Ill. Rev. Stat. 1973, ch. 24, § 3-11-8, provides:

"In municipalities of 500,000 or more inhabitants, the mayor shall have the responsibility for the preparation and administration of the annual budget of the municipality."

To assist the Mayor in carrying out this responsibility, Ill. Rev. Stat. 1973, ch. 24, § 3-10-10, creates the office of Budget Director, who is directly responsible to the Mayor. Section 3-10-10 expressly provides, in part:

"... each officer, department, board, commission or other agency of the municipality receiving a municipal appropriation shall, from time to time as requested by the mayor, prepare and submit to him through the budget director for approval or disapproval *an estimate* of the amount of money required for each activity or function to be carried on by him or it during the ensuing month, quarter or such other period, of the current fiscal year as the mayor shall prescribe. If such *estimate* does not meet with the approval of the mayor, it shall be revised in accordance with the mayor's direction and resubmitted for approval. . . ."

It is no more than such an estimate of the amount required by the Police Department that Ill. Rev. Stat. 1973, ch. 24, § 3-7-3.1 empowers the Police Board to "review, approve and submit to the budget director of the city." As is plain from the very language of this provision, the estimate does not originate with the Police Board, but is merely reviewed by it. The estimate is drafted by the Police Department, as directed by Ill. Rev. Stat. 1973, ch. 24, § 3-10-10, quoted above. Ill. Rev. Stat. 1973, ch. 24, § 3-7-3.2, makes the Superintendent of Police "responsible for the general management and control of the police department." It is therefore the responsibility of the Superintendent of Police to direct the drafting of the estimated budget of the Police Department and the Police Board does no more than review this estimate.

The Police Board can neither originate nor enact a budget. Its power is limited to reviewing and approving. Its approval may be amended or disregarded by the Budget Director, the Mayor and/or the City Council. This advisory role of the Police Board is in consonance with its character. In exercising its role with respect to the budget of the Police Department, the board must necessarily consider the professional performance of the department.

The public is not without opportunity to voice their views on and objections to the budget of the Police Department. That opportunity is afforded them by the public hearings on the budget before the appropriate committee of the City Council—after the tentative budget has been checked and rechecked and revised and brought into relation to the estimated budgets of all the other municipal departments.

The position expressed herein was the subject matter of litigation some years back in a matter entitled *Hill v. Murphy*, tried before the Honorable Edward J. Egan, in the Circuit Court of Cook County. In that instance, Judge Egan concurred in this position and dismissed the petition for writ of mandamus and injunctive relief sought therein.

TAX LEVY ON FUNDS HELD ON LIEN CLAIMS

(U. S. Attorney—R. L. H.—October 11, 1974)

Pursuant to conversations with Alexander D. Kerr, Jr., of your staff and a prior letter to your office, we received a copy of a communication dated September 10, 1974, from the Regional Counsel of the Internal Revenue Service to you setting forth a suggested procedure whereby the sum of \$8,135 currently being held by the City of Chicago for the account of one of its general contractors, Ruby Construction Co., is to be distributed.

On October 10, 1974, there appeared before the Honorable Frederick J. Hertz, Bankruptcy Judge, attorneys representing the Trustee of the Bankrupt's estate, the two subcontractors, and the City of Chicago, as well as the aforesaid Mr. Kerr of your office representing the interests of the Internal Revenue Service (IRS).

It was called to the Court's attention that one of the 7th Circuit cases referred to by the IRS in its communication aforesaid in support of its position that the Trustee is to receive no part of the monies in the hands of the City was handled by the attorney for the Trustee in this matter and, further, that since said decision was contrary to a decision of the 9th Circuit Court of Appeals, a Petition is currently pending before the U.S. Supreme Court for Certiorari.

Although the attorney for the Trustee volunteered to release any claim the Trustee may have to any funds held by the City, the Court indicated that in the event the Trustee's claim was paramount to that of IRS, there is no reason why IRS should take precedence and refused to allow the Trustee's offer of release.

The Court, on the other hand, did investigate with all parties alternative possibilities that should be acceptable to IRS and all parties present agreed that the following procedures should be followed (Mr. Kerr could not agree on behalf of IRS, but indicated that personally, he would recommend same to them) for the expeditious release of the funds:

- a. IRS shall submit to Ruby Construction Co. a Release of Levy for the Levy filed with them for monies allegedly owed by Allcoustic, Inc., Ruby's subcontractor.

- b. The City of Chicago shall release to Ruby the sum of \$8,135 being withheld and Ruby shall issue three checks, as follows:

1. To Dvorak Lathing Company the sum of \$1,800.00
2. To Fester Plastering Company the sum of \$5,100.00
3. To an Escrowee to be determined the sum of \$1,235.00

- c. The Escrow account in the sum of \$1,235.00 shall be held subject to the withdrawal by designated persons pursuant to decision by the U.S. Supreme Court in the matter of *Chicagoland Ideel Cleaners, Inc. v. Phelps*, as follows:

1. If Certiorari is denied, payment shall be made to the IRS.
2. If Certiorari is allowed, payment shall be made
 - (a) to IRS if the 7th Circuit is sustained,
 - (b) to the Trustee if the 7th Circuit is reversed.

As was indicated in our prior letter, Ruby Construction Co. absolutely refuses to disburse any funds withheld by the City for its account until their liability under the IRS Levy is terminated and, there is no disagreement that this is a reasonable and proper legal position to take. This position is even more tenable on a basis that the Levy against funds owed by Ruby to Allcoustic exceeds the monies that are owed by Ruby *exclusively* to Allcoustic and, in addition, Ruby chooses not to be involved in the legal issue of validity of the IRS Levy as against the Trustee since Ruby has no pecuniary interest in the withheld funds itself.

To recapitulate the interests of the various parties involved in this proceeding, we have:

a. Ruby Construction Co. merely desires a Release of the Levy against it filed by IRS and referring to funds owed by Ruby to Allcoustic Inc., Bankrupt. Ruby has no interest in the \$8,135 held by the City and, when said funds are released to it, Ruby will distribute *all* of said funds out.

b. City of Chicago is withholding the sum of \$8,135 due to Ruby Construction Co. as the final payment for work done by Ruby as general contractor to the City on a Fire Station in 1969 and 1970. Ruby hired Allcoustic, Inc. as a subcontractor who, in turn, hired Dworak Lathing and Fester Plastering as two of its subcontractors. Pursuant to Chapter 82, Section 23, Illinois Revised Statutes, notices of lien against public funds were filed by all three of the foregoing subcontractors and, therefore, the City is withholding funds from its general contractor until resolution of the lien claims. The City has no interest in the monies and, as a matter of fact, would like to disburse same and close its files on this project.

c. Dworak Lathing and Fester Plastering have both been waiting to get paid for work done in 1970, work which was and is fully acceptable and the amounts claimed by each of them is definitely owed to them. Dworak is entitled to \$1,800 and Fester is entitled to \$5,100.

d. The Trustee of Allcoustic, Inc., Bankrupt and IRS are in dispute as to who is legally entitled to receive the balance of \$1,235 remaining in the hands of the City after payment to the two subcontractors referred to in the paragraph immediately above.

Since both Dworak and Fester have been patiently waiting for payment for many years watching the purchasing power of said monies decrease with inflation and since there is total agreement that they should be paid what is owed to them and paid NOW, it only seems logical to pursue the procedure set forth hereinabove which appears to be acceptable to all parties at this time with the exception of IRS who has not as yet been officially apprised of same.

The City of Chicago, therefore, joins with the Court, the Trustee and the two subcontractors in requesting you to urge the IRS to accept the procedure set forth hereinabove which will enable the two subcontractors to finally receive the payment that has been due to them for such a long time and will not prejudice the rights of either the IRS or the Trustee to receive the balance remaining once the U.S. Supreme Court has ruled on the issue presently before it.

We would also indicate that the City would not care to be the escrowee of the remaining \$1,235 and, we would guess, neither would Ruby. We would suggest a bank escrow with withdrawal subject to the signatures of the Trustee's attorney *and* either your office or the IRS. Once the funds are disbursed to the two subcontractors and the escrowee, the bankruptcy matter could remain on a dormant status pending Supreme Court action and there would no longer be a need for so many parties to incur expenses with court appearances, especially parties who have no financial interest and parties whose financial interest decreases with the passage of time.

We sincerely hope that you can convince the IRS to go along with the proposal outlined herein such that this matter may be finally resolved on or before November 1, 1974, when we are again scheduled to appear before Judge Hertz.

Copies of this letter and the IRS letter of September 10, 1974, referred to in the first paragraph above are being sent to all parties who were present in Court and to Ruby Construction Company as well. It is hoped that if the foregoing properly sets forth the views of the parties, advice of this agreement will be immediately forwarded by letter to Alexander D. Kerr, Jr., Assistant United States Attorney, to add weight to the approval of the aforesaid procedure by IRS.

REMOVAL OF SUBCONTRACTORS' LIENS ON PUBLIC FUNDS

(L. O. W.—M. J. H.—October 23, 1975)

This letter is being sent to confirm our telephone conversation of October 22nd. The work done by your company for the City of Chicago was basically completed some years ago and, pursuant to the terms of the contract, the sum of Fifty Thousand Dollars (\$50,000.00) was withheld by the City from the final payment for said work as a guarantee that a performance test could be passed.

Due to some difficulties over the past few years, this performance test was not run until a few months ago and it failed. It will now take a few more months until this test can be run again.

There are, however, five subcontractors who worked on the incinerator job whose work has been completed and accepted for quite some time and who have filed notices of lien against public funds since they have not been fully paid.

In addition, the sum withheld for the performance guarantee has decreased to slightly less than half of the original amount due to the need on the part of the City to pay for certain items of work on the incinerator which were your responsibility and charge the cost of same against this fund.

Discussions with the Department of Public Works, the five unpaid subcontractors and yourself have given rise to a proposition which appears to be fair and equitable to all parties concerned and will allow the unpaid subcontractors to get paid immediately and not cause them any further inconveniences for causes that are totally outside of their control.

Subject only to the approval of your bonding company, it is proposed that the current performance bond be continued in force to guarantee a satisfactory performance test, the liability thereunder, however, to be reduced to a maximum of Twenty-five Thousand Dollars (\$25,000.00). This will enable the

City to disburse the performance guarantee fund of Fifty Thousand Dollars (\$50,000.00) to the five subcontractors and will enable the City to reimburse itself for the monies expended on your behalf. The funds will be disbursed as follows:

1. Wm. J. Van Dyck Contractors	\$ 3,837.00
Judgment plus costs plus interest to October 26, 1975 (any further interest is waived)	
2. Piping Systems, Inc.	4,619.04
3. Industrial Coatings Co., Inc.	2,400.00
4. Cannon Steel Erectors, Inc.	8,295.00
5. Standard Boiler & Tank Co., Inc.	4,000.89
6. City of Chicago back charges	26,210.55
7. Balance to Ovitron Corp.	637.52
Total	\$50,000.00

Since checks for items 1 through 5 above will be made payable to Ovitron Corporation and are to be disbursed to others, it will be necessary for you to come into Chicago to endorse the checks over to each individual payee. Checks will then be disbursed in exchange for a release of notice of claim against public funds and a waiver of lien from each subcontractor and a Satisfaction of Judgment in addition thereto from Van Dyck.

As an alternative which would avoid a trip to Chicago, if Ovitron Corporation could issue certified checks payable to each of the aforementioned subcontractors and deliver to the undersigned for disbursement under the same exchange provision as set forth above, one check for \$23,789.45 (the total of items 1 through 5 and 7) would be mailed to you.

Please forward directly to Deputy Commissioner George Eng, Department of Public Works, the response of your bonding company to this proposal, and if acceptable to them, please also advise Commissioner Eng of which alternative above you desire. We would appreciate receiving a copy of such communications.

MAYOR'S AUTHORITY— SUPERVISION OF CITY DEPARTMENTS

*(B. M. B., Budgetary Division, Office of the Mayor
—K. R.—July 13, 1979)*

In response to your memorandum directed to this office, I have reviewed the form which the Budgetary Division of the Mayor's office proposes to require to be completed by various city departments seeking federal assistance in order to implement a program for managing federal grant applications to be known as "Federal Funds Alert System."

With regard to this proposal, you inquired whether this office wished to make any suggestions concerning the proposed "request for grant approval" form and instructions for its use, and more specifically, whether the Mayor or the Budget Director has the authority to require the commissioners of various city departments to comply with a directive to furnish such information to the Mayor's office under the proposed program.

Since the proposed form appears to be sufficiently detailed, and instructions are clear, I have no additions to suggest.

As chief executive officer of the City, the Mayor is charged with the ad-

ministration and supervision of all city departments. Therefore, the Mayor is empowered to direct City department heads to furnish her office with the information requested in the proposed form. The Mayor may delegate her authority in this matter to one of her administrative officers, such as the Budget Director.

Section C. JUDGMENTS AND CLAIMS

MISTAKE OF FACT IN AUTHORIZING RELEASE

*(Owner of Vessel Involved in Collision with City Bridge
—R. G. M.—September 12, 1973)*

We are in receipt of your letter of August 21, 1973 and acknowledge that the undersigned did sign a release for the above mentioned collision, dated April 26, 1972 in the amount of \$147.36. However, due to a change, at the time, of cost procedure in the Department of Public Works, an initial warrant, in error, was sent through certain channels, namely, the Corporation Counsel's Office and to the Comptroller's Office, for the amount of \$147.36. This initial warrant was for certain work that was needed to immediately put the subject bridge in operation.

On Tuesday, March 30, 1971 a joint survey was made of the collision and the damages to the 106th Street Bridge. At that time, you had a representative present by the name of T. Bown. Our information further discloses that Mr. Bown sent you on September 13, 1971 photographs and a bridge plan; and, also in April of 1971, an estimate of damage to the amount of \$13,305.00.

My investigation indicates that the substantial part of the work was completed within the last year and that the amount of \$147.36 was included in the total billed on the warrant issued for the amount of \$8,936.50.

Under the circumstances, we are of the opinion that a material mistake of fact was made as to the cost of the damage and the release granted thereon. We also feel that in light of Mr. Bown's report to you that it is patent that you also made a mistake in believing that \$147.36 would satisfy our claim. In light of the fact that it appears there has been a material bilateral mistake of fact, and that public monies are involved, we must take the position that the release that I executed is not a complete release, except as to the \$147.36.

It is true that we are embarrassed by this and that we perhaps have also caused for some inconvenience on your part. For this we are sincerely sorry. We also feel that due to the circumstances you will understand and give due deliberation to settling this matter without causing any undue or lengthy litigation.

ALLEGED ILLEGAL ENTRY— SETTLEMENT PROPOSAL

(M. A. F.—M. S. J.—September 5, 1973)

Your letter of August 20, 1973 relative to an alleged illegal entry and search of the premises of your client, James Asquire, on or about February 22,

1973 has been received and referred to the undersigned for response. In your letter you indicate that your client sustained damages that the City of Chicago should compensate him for. You further indicate that you wish to avoid filing a lawsuit and desire to settle Mr. Asquire's bills which approximate \$150.00.

Although the Law Department of the City of Chicago is always anxious to compromise and settle valid claims, it is not apparent from your brief letter directed to the Corporation Counsel and the Chicago Police Department whether or not your client's claim is valid and what, if any, his damages are.

It is therefore suggested that you either present your claim to the Finance Committee of the Chicago City Council or, if you feel it appropriate, file a lawsuit. I am sure the resulting discovery will elicit all of the necessary facts and that the interests of justice will be served.

HOLD HARMLESS AGREEMENTS— MINORS

*(Commissioner, Department of Streets and Sanitation
—R. L. H.—September 18, 1973)*

Your letter of August 29, 1973, requests our assistance in drafting a Hold Harmless Agreement that would protect the City from liability caused by injury to an individual or group visiting City Disposal Facilities.

Forwarded herewith is a General Release form drafted to meet your needs in the case of an individual visitor. Where you have a group of visitors, each individual in the group should execute a copy of the Release form. I have marked up one copy of the form as an explanation of how it is to be handled and, if you have any questions, please call.

The only situation not covered by this form is the instance of minors visiting the facilities as, for example, a class group of school children. A set of release forms could be prepared for this situation, which entails parental releases as well as school indemnification. We know from experience that it is extremely difficult to obtain all parental consents and it is impossible to obtain indemnification from the Chicago Board of Education. If you would like us to prepare these forms anyway, please advise.

SCHOOL CHILDREN VISITING CITY FACILITIES

*(Superintendent, Board of Education—R. L. H.
—October 10, 1973)*

Various City of Chicago Department Heads have called to our attention the fact that City of Chicago facilities such as Meigs and O'Hare Airports, the Filtration Plants and Incinerator Plants, among others, have been the subject matter of various field trips by students in various public schools in Chicago. They have now raised the question of liability on the part of the City of Chicago in the event one of the school children partaking in these field trips is injured on City of Chicago property.

Since the possibility is present that an injury may occur (the fact that none have occurred to date only serves to shorten the odds on an injury occurring in the future) it is our suggestion that a contract be entered into be-

tween the City of Chicago, on the one hand, agreeing to continue the availability of the City facilities for these field trips, and the Board of Education, on the other hand, agreeing to indemnify, defend and hold the City harmless from any injury arising out of any of said field trips to City facilities.

If this suggestion is agreeable to you, we would ask that a Board attorney contact the undersigned as soon as possible with a view toward preparing an acceptable contract for submission to the Board of Education and to the City Council.

RELEASE OF INFORMATION BY ATTORNEYS DURING LITIGATION

*(Chicago Attorney—M. S. J.—
November 6, 1973)*

The undersigned has been advised that you will be appearing on a radio program to be broadcast on WIND relative to the recent series of articles in the Chicago Tribune regarding the Police Department. I am further advised that Congressman Ralph Metcalf, an officer of one of the plaintiff corporations that you represent, Concerned Citizens for Police Reform, will also be appearing on said program.

In an effort to prevent any possible interference with a fair trial in the above captioned case I wish at this time to remind you of Rule 40 of the General Rules of the United States District Court for the Northern District of Illinois which rule is titled "Release of Information by Attorneys in Civil Cases." That rule enjoins a lawyer or law firm associated with a civil case during the litigation of the case from making or participating in making an extra judicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to: (1) evidence regarding the occurrence or transaction involved; (2) the character, credibility, or criminal record of a party, witness, or prospective witness; (3) the performance or results of any examinations or tests or the refusal or failure of a party to submit to such; (4) his opinion as to the merits of the claims or defenses of a party, except as required by law or administrative review; and any other matter reasonably likely to interfere with a fair trial of the action.

Of course, I would expect and assume that you will comply with Rule 40 as I assume you have in the past.

DEFENSE AND INDEMNIFICATION FOR TORT LIABILITY

*(Director, Mayor's Office for Senior Citizens—
B. M. K.—November 26, 1973)*

In response to your letter of November 5, 1973, the following is presented to clarify your points of inquiry.

If a client is transported in a staff members private vehicle, the City of Chicago would probably defend the staff member employed by the City of Chicago for any negligence on his part, while in the scope and course of his employment.

If an employee was sued for willful and wanton misconduct while in the course and scope of his employment, the City of Chicago would probably defend him, but may elect not to indemnify him if he was in fact found guilty of willful and wanton misconduct.

It should be pointed out that the staff member's own vehicle may be privately insured and therefore liability and property damage caused by the staff member would be covered by his insurance company and they would furnish the legal representation.

If the vehicle is owned by the City of Chicago, the City would provide the legal representation for the staff member unless he was on a frolic of his own and not in the scope of his employment; a vehicle that is leased by the City of Chicago may come under private insurance provided by the leasing firm for a nominal charge; if such is the case then the private insurance coverage provides the legal representation. No legal fees are paid by the staff member in any of the foregoing situations.

As to Part C. of your letter, the policy of the City of Chicago is to pay judgments entered against it and/or its employees in the scope of their employment for *negligence*. If a client is injured through the willful or wanton act or intentional act of a city employee, the City of Chicago may elect not to indemnify that employee for such a judgment entered against him. If the staff member is injured as the result of his own negligence, he cannot recover any money under the law.

As to Part D of your letter where senior citizens board a parked mobile van to receive service and the van is owned by the City; the policy again is to pay for any negligence of the City or its employees resulting in such injury.

In all of these cases the City of Chicago does not charge legal fees through the Corporation Counsel's Office to the staff member it represents. If the staff member elects to hire a private attorney without first asking the City of Chicago to defend him, then the staff member must pay his own attorney's fees to his private attorney.

Please feel free to write or call if you should have any further questions regarding the above.

LIABILITY FOR CONTRACTOR ACTIONS

*(Commissioner, Department of Human Resources
—W. M. Z.—March 12, 1974)*

We herewith acknowledge receipt of your request for an opinion as to the liability of the Department of Human Resources in regard to Block Grants.

We have read the samples submitted to us and also have researched the matter and it is our opinion that the City of Chicago would be liable for any injuries to children who are transported in buses chartered by the Block Organization.

You will note that your Block Grant Agreements state that the parties of the second part are designated as "contractors." The contractors are under the control of and must account to the City for their actions. Therefore, it appears that the bus company hired by the contractors, the drivers of the buses, the contractors and the City of Chicago would all be liable as joint feorsors in the event of injuries to the children using the facility.

CHICAGO PUBLIC LIBRARY—LIABILITY FOR TORTS

(Chief Librarian—M. L. R.—March 29, 1974)

Your recent communication to Richard L. Curry, Corporation Counsel of the City of Chicago, has been referred to the undersigned for consideration and response. You request an opinion regarding the following issues:

“(1) Is the Chicago Public Library covered by the Judgment Tax Fund as provided in Section 8-1-16, Chapter 24, Illinois Revised Statutes?”

“(2) Will the City of Chicago defend the Chicago Public Library in suits arising out of tort and damage cases, and be responsible for the payment of judgments entered against the Board of Directors of the Library?”

Enclosed please find a copy of a previously published opinion from this office entitled “Public Library Tort Liability,” which appears in Volume 24 of the Opinions of the Corporation Counsel and Assistants at pgs. 103-104 (No. 12231). We trust that your inquiry will be fully answered from an inspection of this past opinion which still holds true to the present date.

LIABILITY FOR INJURY TO VOLUNTEER WORKER

*(Commissioner, Department of Human Resources
—W. M. Z.—April 5, 1974)*

Please refer to your communication of March 20, 1974 wherein you request our opinion as follows:

“I am asking for an opinion as to whether or not the City has any liability on the basis of the facts listed below:

“James Wichsmeyer, age 21, volunteered his services, free of charge, to Tom Dorwart, a staff member of the Department of Human Resources, to work on the Department’s float, which was being prepared for the St. Patrick’s Day Parade, by Mr. Dorwart.

“Mr. Wichsmeyer is not, as yet, on our payroll, but his employment requisition is at City Hall waiting clearance.

“On March 19, 1974, Wichsmeyer was operating a power saw on the premises at 4555 W. Monroe Street, which the Department leases for the storage and work space for our float. He accidentally injured his index finger, and was taken to County Hospital for emergency treatment. He was subsequently admitted to the hospital for surgery, to repair the finger, and is presently still a patient in the hospital. He is concerned about hospital and doctor bills.

“We will appreciate an opinion in this matter, so as to know what action, if any, we should take in this case.”

It is our opinion that since Mr. Wichsmeyer, at the time of injury, was not an employee he has no claim against the City of Chicago as there is no liability.

In support of our opinion we call to your attention the following case No.

44967, Appellate Court, *The Board of Education of the City of Chicago, v. The Industrial Commission, et al.*, and are enclosing a copy of said opinion herewith.

LIABILITY LIMITED TO FAIR MARKET VALUE

*(Chief Examiner, Committee on Finance—
A. M.—April 19, 1974)*

In answer to your recent request for a legal opinion on the above mentioned matter, please be advised that legally the claim is valid. However, the amount being claimed is excessive.

The Police Department endeavored to notify claimant to pick up his car, prior to destruction. The property in question was a 1966 Ford, and according to police records, it was damaged.

It is our opinion that the City of Chicago is liable only for the fair market value of said property on the date of destruction.

LIABILITY FOR STORAGE CHARGES

*(Acting Commissioner, Department of Public
Works—H. F. W.—May 23, 1974)*

We wish to acknowledge receipt of your letter of May 2, 1974, in which you request our opinion as to whether the Invoice from Nebraska Boiler Company for storage charges should be paid by the City of Chicago.

During the trial of this matter, in conversations with Mr. George Eng of your Department and Mr. James Arnold of the Purchasing Department our office was advised that the two boilers stored in Nebraska had been paid for and became the property of the City sometime back in either 1970 or 1971. To ascertain whether the City should pay the storage charges it will be necessary for you to determine the exact date on which title to these boilers passed to the City of Chicago, and it therefore follows that the City is obligated to pay storage charges for its property from that date to the present time. We sincerely trust that this information will assist you in resolving this matter.

SETTLEMENT OF TORT CLAIM WITH STATE

*(Commissioner of Public Works—
M. J. D.—June 24, 1974)*

The Law Department has had several conferences and conversations with members of your staff concerning the above case. The present communication is meant to inform your office of the status of the case and what the Law Department expects of the Department of Public Works.

On August 19, 1971 our employee, Philip McChrystal (since terminated), was driving a City truck on I-94 with the bed in the fully raised position. The bed tore down an overhead sign and severely damaged a pre-stressed concrete beam of the bridge overpass at Martin Luther King Drive. The City's liability

is obvious and we are not contesting this with the State of Illinois although there are some grounds, which involve a technicality regarding notice. We have little chance of winning on this point but it does give us some leverage in settling for less than 100% of the damage.

We have made the offer to the State to repair the bridge and pay 90% of the amount due to replace the sign. However, the settlement would involve a court order upon the City to repair the bridge. It is the position of the Law Department that the responsibility of repairing, and therefore funding, is with the Department of Public Works.

Please advise us when you can incorporate the funding in your budget.

LIABILITY FOR INVASION OF PRIVACY

(Deputy Chief Librarian—R. F. F.—
July 16, 1974)

We are in receipt of your letter of May 8, 1974 requesting the opinion of the Corporation Counsel as to the potential liability of the Chicago Public Library in two respects: liability to artists whose exhibits at the library may be photographed, and liability to patrons of the Library who may be photographed therein.

With respect to artists, the law seems to be clear. An artist has the exclusive common law right to reproduce copies of his work. *Caliga v. Inter-Ocean Newspaper Co.*, 157 F. 186, aff'd., 215 U.S. 182 (1909). However, he loses such common law copyright upon *first public display*. The common law copyright is only retained when paintings are exhibited in a gallery prohibiting copying of the work. However, if the prohibition is not strictly enforced, the work is dedicated to the public and all proprietary rights lost. *American Tobacco Co. v. Werckmeister*, 207 U.S. 284 (1907). The Library of course does not, and probably cannot, enforce such a restriction. Thus, for his own protection and to insure his marketing monopoly, the artist should, if he desires, copyright his works under the federal copyright statute, Title 17, U.S. Code. That is the only way the copyright may be protected after public display. If the artist does not do so, and his work is published (displayed publicly), his inherent rights are waived, and no recovery is available to him.

If an artist is protected by common law or statutory copyright, any person who does an act amounting to infringement is liable to him. *Belford v. Scribner*, 144 U.S. 488 (1891). But, before one may be held liable as an infringer of a copyright, absent a special relationship such as agency or partnership, he must have had the right and ability to supervise the infringing activities as well as a direct financial interest in the activities. *Roy Export Co. Establishment v. Trustees of Columbia University*, 344 F. Supp. 1350 (D.C.N.Y. 1972). However, persons in no way connected with, responsible for, or benefiting by the infringement are not liable therefor merely because they stand in some relation to the infringer. *Deutsch v. Arnold*, 98 F. 2d 686 (2nd Cir., 1938). The Chicago Public Library, then, would obviously not stand in the position of benefiting by any infringement in a pecuniary manner, and its relationship, if any, to an infringer would not be a supervisory one. Accordingly, it is the opinion of the Corporation Counsel that there would be no liability attaching to the Library, if impermissible use were made of photographs taken of those works displayed which happen to be protected by copyright.

The second issue of inquiry was the potential liability of the Library to patrons who may be photographed by third parties. This issue involves the right to privacy which all individuals possess. In *Eick v. Perk Dog Food Co.*, 347 Ill. App. 2d 293 (1952), the Appellate Court enunciated the Illinois rule regarding actions for invasion of privacy. At page 299 that court said:

A person may not make an unauthorized appropriation of the personality of another, especially of his name or likeness, without being liable to him for mental distress as well as the actual pecuniary damages which the appropriation causes. The right of privacy is, of course, limited in cases of express or implied *consent* and in areas of legitimate *public interest*.

The courts have tended to apply this right to privacy only in the case of the use of a person's name or likeness for commercial or advertising purposes. *Smith v. WGN, Inc.*, 47 Ill. App. 2d 183 (1964). Areas of legitimate public interest, such as fair news reports, have not been considered commercial enterprises, and as such, recovery has not been allowed. *Rozhon v. Triangle Publications*, 230 F. 2d 359 (7th Cir., 1956). In addition, since the public areas of the Library are by definition public places, a patron's expectation of privacy is minimal or non-existent; he may be photographed to the same extent as if he were on the street or in the park. Therefore, news and public interest photos may be taken of persons using the Library (if of course, patrons are not unduly disturbed). But in any case, since the Chicago Public Library would not be the party making any such wrongful disclosure, it logically follows that no liability would attach to it, should a patron be photographed by another and an impermissible use be made of such image.

For the reasons set out above, it is the opinion of the Corporation Counsel that there would be no liability on the part of the Library to artists whose works are photographed while on exhibit at the Library; and that there would be no liability on the part of the Library to Library patrons who may themselves be photographed.

COURT COSTS OF ERRONEOUSLY LISTED DEFENDANT

(*Commissioner of Buildings—F. G. S.—*
August 6, 1974)

Your recent letter addressed to Richard L. Curry, Corporation Counsel, regarding the above captioned matter, has been referred to the undersigned for attention and reply.

We have reviewed the matter of the erroneous listing of certain party defendants as stated in Mr. Davis' letter of May 28, 1974 and his claim that the Building Department is liable for the costs incurred by him in connection therewith. It is our opinion that there is no liability for these costs on the part of the Building Department of the City of Chicago. The naming of the defendants was based on a Title Report prepared by Chicago Title Insurance Company and in the process an honest error occurred. Had Mr. Davis or someone on his behalf called your department or this office upon receipt of the service of summons and brought this error to our attention, the matter would have been corrected and the defendants dismissed without the necessity of filing an appearance fee or the appearance of the defendants or their attorney in court. The manner in which the defendants chose to proceed was of their own choosing and places no liability upon the City for any expenditures on their part.

LIABILITY FOR EVIDENCE STOLEN FROM POLICE STORAGE

*(Superintendent of Police—R. L. C.—
August 6, 1974)*

I have discussed with Lt. Brzeczek of your staff the facts surrounding the subject claim presented by Irvin N. Slone, Vice President of Apco.

Forty-two cases of spark plugs with an established wholesale value of \$3,085.23 were in the custody and control of the Chicago Police Department for evidentiary purposes. The value of the property was proved up in court and is not in question. This property was subsequently *stolen from a Police storage facility*. The responsibility of the Police Department to exercise care in protecting property in a bailment status held for evidence imposes absolute liability in this case which should be discharged by payment of the claim without further delay.

I have reviewed and approved the attached Release which, in my opinion, when fully executed, will authorize your Department to make the necessary restitution.

NO DUTY TO DEFEND INDEPENDENT CONTRACTORS

*(Superintendent of Police—M. S.—
September 23, 1974)*

Your recent communication addressed to Richard L. Curry, Corporation Counsel City of Chicago has been referred to the undersigned for review and reply.

Your communication requests an opinion, whether the Police Department can comply with a request of the Michigan State Police, for a written agreement to supply any and all legal services in the defense of their members in Civil Suits brought against them for their good faith performance on behalf of the Chicago Police Department.

The communication points out that the Department has on occasion availed itself of the Michigan State Crime Laboratory to establish identifications and that the Michigan State Police had provided this service free of charge.

The agreement requested by the Michigan State Police requires the Department to obligate itself to supply legal counsel which may or may not be required at some unforeseeable future date. Such a contract is of no legal force or validity pursuant to the provisions of Chapter 24, par. 8-1-17, Illinois Revised Statutes 1973.

On the other hand it appears absolutely clear that the Superintendent of Police has no authority to contractually bind the Corporation Counsel to render legal services, where there is no obligation placed upon the Corporation Counsel by statute or ordinance to render such services.

Chapter 6-2 of the Municipal Code of the City of Chicago provides in relevant part as follows:

"The Corporation Counsel shall perform the following duties:

- (c) appear for and defend any members, officer or employee of the Board of Health, Police Department or Fire Department who is sued personally for damages claimed in consequences of any act or omission or neglect of his official duties or in consequence of any act under color of authority or in consequence of any negligence while engaged in the performance of such duties."

Employee, is defined in the Tort Immunity Act, Chapter 84, Sec. 1-202, Illinois Revised Statutes as follows:

"'Employee' includes an officer, member of a board, Commission or Committee, servant or employee whether or not compensated, *but does not include an independent contractor.*" (Emphasis Supplied.)

Independent contractor has been defined by the Illinois Supreme Court as one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains that result. *Bristol & Gale Co. v. Industrial Comm.*, 292 Ill. 16. The Michigan State Police Laboratory is not under the control or direction of the Chicago Police Department as to methods, procedures, or personnel that will be utilized by them to compare, analyze and evaluate the voice prints submitted for identification purposes. Thus, the Michigan State Police Laboratory and personnel are an independent contractor, which the Corporation Counsel is not obligated to defend.

Under the aforesaid circumstances the Superintendent or any subordinate within the Department cannot enter the contractual agreement requested, without express City Council legislation permitting the Corporation Counsel to represent members of the Michigan State Police acting in our behalf or permitting the Department to enter into such a contract under some form of intergovernmental cooperation.

LIABILITY CLAIMS AGAINST CITY EMPLOYEES

(*Director, Alcoholic Treatment Center—R. L. H.—
June 2, 1975*)

Your letter of May 20, 1975, directed to Acting Corporation Counsel William R. Quinlan has been assigned to the undersigned for review and reply.

Since the Alcoholic Treatment Center is operated by the Commission for the Rehabilitation of Persons, a Commission authorized and fully funded by the City Council of the City of Chicago, the Center, its Directors (Commission Members) and employees are covered under the City of Chicago's self-insurance provisions for liability claims of any kind or nature.

In addition, while the Directors (Commission Members) are acting in their official capacities, any legal aid necessary would be provided by the office of the Corporation Counsel of the City of Chicago.

From our telephone discussion, it appears that the foregoing confirms an oral opinion given to you by Mr. Robert Downey of this office.

CHICAGO SKYWAY—RATE STRUCTURE CHANGE

(A. A.—E. L. N.—April 2, 1976)

Mr. Clark Burrus, City Comptroller of the City of Chicago, has requested our office to submit directly to you an opinion with respect to any pending or threatened litigation, claims and assessments affecting the Chicago Skyway.

There is pending one lawsuit entitled *Emigrant Savings Bank, et al. v. City of Chicago*, Case #72 C 1644. The relief sought by the plaintiff is an increase in rates charged for the use of the Chicago Skyway by trucks and automobiles.

On May 24, 1973, the Court entered an order requiring an increase in the automobile tolls to fifty cents per vehicle. This Court order was immediately implemented by Council Order of the City of Chicago on the 22nd day of June, 1972.

On February 24, 1975, the Court entered a supplemental Order requiring a change in the discount rates charged to major users of the Chicago Skyway.

The City of Chicago immediately implemented the charge in accordance with the Court order. At present there is no outstanding petition or motion in the said cause to require any further change in the present rate structure.

The nature of the litigation does not, in any way, affect the legal status of the Chicago Skyway with respect to the bonds heretofore issued.

We have no knowledge of any other claim, litigation or assessments involving the Chicago Skyway.

LEGAL EXPENSES OF WITNESSES FOR CITY DEPARTMENTS

(Assistant Commissioner Department of Health—
M. S.—April 23, 1976)

I am in receipt of your letter of April 1, 1976, wherein you enclose a list of expenses incurred by Thomas F. McGee relative to his appearance at the Schiff trial and indicating that it is your understanding that our office has an account to pay witnesses in court cases such as Thomas F. McGee.

The fund in our office is used to pay for certain prescribed legal charges of witnesses. However, Thomas F. McGee did not appear as an independent witness, but was a defendant in the case due to his actions when head of the Mental Health Division of the Chicago Board of Health which the Board ratified, and as such his expenses are chargeable to the Department of Health. The expenses submitted by Thomas F. McGee are very reasonable and were incurred pursuant to his attendance at trial.

CLAIMS AGAINST CHICAGO SKYWAY

(A. A.—E. L. N.—May 3, 1976)

Reference is made to our letter of April 2, 1976 wherein we rendered an opinion with respect to the Chicago Skyway.

We hereby re-affirm the accuracy of all matters set forth in that opinion.

In addition, this will confirm, as correct, the Skyway's understanding that whenever, in the course of performing legal services for the Skyway with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure, concerning which I have formed a professional conclusion that the Skyway must disclose or consider disclosure concerning such possible claim or assessment, I, as a matter of professional responsibility to the Authority, will so advise the Skyway and will consult with the Skyway concerning the question of such disclosure.

If there is any further information that you require in this regard, please contact Mr. Earl L. Neal, telephone—744-6972.

CITY TORT LIABILITY FOR ACTS OF EMPLOYEES

*(Chief Investigator, Committee on Finance—
T. D. O.—May 14, 1976)*

In accordance with your request regarding the liability of the City of Chicago in the matter of the above claim, reference is made to the following statutes:

Chapter 85, Section 2-109 Illinois Revised Statutes, 1975, entitled "Local Government," as follows:

Chapter 85 Section 2-109

"a local public entity is not liable for an injury resulting from an act or omissions of its employee where the employee is not liable."

And Chapter 85, Section 2-202 Illinois Revised Statutes, 1975, entitled "Local Government" as follows:

Chapter 85 Section 2-202

"A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton negligence."

Coupled with the facts indicated in the Supplementary Report of the Chicago Police Department, it would appear that in the absence of willful and wanton conduct or negligence on the part of the police no liability would attach either to the City of Chicago or the police for any damage resulting from the conduct and acts of the police in connection with this incident.

This incident comes within the purview of the statutory provisions quoted above and since the police are not liable therefore under Section 2-202, it follows that the City of Chicago is not liable under Section 2-109.

DONATION OF NEWSFILM TO CHICAGO PUBLIC LIBRARY

*(C. F. A., News Manager—R. L. H.—
May 17, 1976)*

Pursuant to our phone conversation in the above-entitled matter, please be advised that the library has questioned us regarding its possible exposure to liability for claims of defamation and/or invasion of privacy resulting from

their use of the Newsfilm donated to them as provided in the letter agreement dated September 30, 1975, and accepted by the library on October 13, 1975, copy attached.

Our review of paragraph 3 of this agreement reveals that it appears quite clear that the library will hold WGN harmless from any claims arising out of any use by them that is not specifically provided for in paragraph 2 thereof.

We find, however, that the library appears to have an exposure to claims even with proper use of the Newsfilm in those instances where the Newsfilm has not been actually televised.

We would, therefore, request that an amendment to this letter agreement be prepared adding another paragraph reading substantially as follows:

"4. We agree to defend and hold the Chicago Public Library, the City of Chicago, their officers, agents and employees harmless against any and all losses, costs, claims and damages arising from use of the Newsfilm referred to hereinabove where said use is as specifically authorized in paragraph 2 above, including, but not limited to, claims for defamation or invasion of privacy by persons pictured in the said Newsfilm."

Please advise at your earliest convenience.

LIABILITY FOR INVASION OF PRIVACY

*(Acting Commissioner, Department of Human Resources
—H. A. T.—July 22, 1976)*

The Department of Human Resources is cooperating with the Illinois Law Enforcement Commission in a study which requests the compilation of a Questionnaire that includes information generally deemed private and personal. It is not clear from the data received, as to what Agencies or individuals will have access to this information after its compilation.

The Department has raised two questions:

- (a) Will the use and distribution of the Questionnaire be an invasion of privacy.
- (b) Assuming there is an affirmative answer to Question (a), what safeguards may the Department take to avoid liability arising out of such invasion.

Although it is a relatively new concept, the civil right of action arising out of a tortious invasion of privacy has become well-established. Many States have adopted specific Statutes protecting the Right of Privacy. The Illinois Constitution of 1970 states in its Bill of Rights, Article I, Sec. 6: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, *invasion of privacy*, or interceptions of communications by eavesdropping devices, or other means." It is to be noted that the phrase "invasion of privacy" was not in the 1870 Constitution.

Although no specific Statutes have been adopted to implement the provision pertaining to "invasion of privacy" none is required for the activation of the Bill of Rights.

The trend of the Case Law has been towards greater protection of in-

dividuals against invasion of their rights to privacy. See EICK vs. PERK DOG FOOD COMPANY, 347 Ill. App. 293. This is the first case in Illinois that recognizes this right. Additional cases of interest which discuss the Right of Privacy have confused the same with the laws concerning Libel. Citing: BLOOMFIELD vs. RETAIL CREDIT COMPANY, 14 Ill. App. 3d 158, and LEOPOLD vs. LEVIN, 45 Ill. 2d 434. However, under Sec. 6, Art. I of our 1970 Constitution, it is clear that Invasion of the Right of Privacy is a separate and distinct wrong and redress for said wrong is available in our Courts.

As to question (b), it is suggested that the individuals who are being questioned be advised of the intended use of the Questionnaire, and be requested to execute a statement permitting the Department to use said information and releasing the Department from any liability arising out of its use. In the event the individual is a minor, a parent, or parents should execute the statement and release.

LIABILITY ARISING FROM EDUCATIONAL PROGRAM FOR PARAMEDICS

*(Commissioner, Fire Department—P. M. S.
March 1, 1977)*

We are in receipt of your letter with respect to the request of Dr. Frank J. Baker for certain assurances. Kindly consider this letter as our reply to your communication and you may use it responding to Dr. Baker if you wish.

It is acknowledged that employees of the Chicago Fire Department wish to participate in the continuing education program for mobile intensive care personnel to be conducted by the University of Chicago Hospitals and Clinics. It is our understanding that the purpose of the program is to assure that individuals responsible for delivering intensive care to critically ill patients have the appropriate skills to render this type of care.

As you are aware, the City of Chicago is essentially self-insured. Pursuant to the request of Dr. Baker, the City also acknowledges that if it itself or one of its employees acting within the scope of his employment is named as a defendant in a lawsuit arising out of an incident occurring in the clinical areas during the program at the University as well as participating hospitals thereof, it will appear and defend itself and/or one of its employees under these circumstances. As a self-insured, the City of Chicago has made it a practice to follow this procedure.

PROPERTY DAMAGE— RUPTURE OF WATER MAIN

*(Chairman, Finance Committee—T. D. O.—
April 11, 1977)*

Gertrude A. Lloyd, of 6901 South Oglesby Avenue, filed a claim for damages as a result of water damage caused by the water main break of October 22, 1976 at 6900 South Shore Drive. She claimed a loss in the amount of \$412.05. The following items were allegedly stored in a basement locker that was flooded at 6901 South Oglesby:

Cedar storage closet	—	Cedar storage chest
3 pairs of drapes	—	Assorted bed linen
2 throw rugs		

The claimant has substantiated the loss of the cedar storage chest and cedar storage closet by submitting an estimate of cost of repairs from Randolph Cabinet Works in the amount of \$225.00. The claimant had also previously submitted a bill for cleaning the drapes in the amount of \$26.25.

It is recommended by the Law Department that the claim be paid by the Finance Committee in the amount of \$162.81 which sum represents 75% of the amount of the claimants substantiated loss.

DAMAGE TO RIPARIAN OWNERS— SLUDGE DISPOSAL

(*Commissioner, Department of Development and Planning*
—H. A. T.—May 5, 1977)

Recently you submitted a request for an opinion as to the legal problems that may arise if the City, in conjunction with the U.S. Army Corps of Engineers, determines to use the South Fork of the South Branch of the Chicago River (Bubbly Creek), as a disposal site for dredging spoil. You presented two specific questions for our review:

1. Do the land owners abutting Bubbly Creek have riparian rights?
(a) Do they have rights of accretion?
2. Are there any other rights of the abutting land owners which might be affected?

We have not made a search of the title records of the lands abutting both banks of Bubbly Creek and, therefore, our answers to your questions will be general.

The law differs concerning ownership of a body of water as to whether it is large or small. For example, title to Lake Michigan rests in the respective States. *Commissioners of Lincoln Park vs. Fahrney*, 250 Ill. 256. Title to a riparian owner of a non-navigable stream or pond extends to the middle of the same. *Hardin vs. Jordan*, 140 U.S. 371. Title to the Mississippi River extends to the center of the river for the abutting owners. *Sikes vs. Moline Consumers*, 293 Ill. 112. As a generality, we may state that title to a navigable stream is in the riparian owners, subject to the paramount right of the public to its use as a navigable stream. *Leitch vs. Sanitary District*, 369 Ill. 469.

If property that abuts a stream is conveyed without any limitations, the title goes to the center line of the stream. If title is conveyed by *metes and bounds*, with one of the boundaries being the bank of the stream, title to the Grantee would only go to the bank of the stream. The original patents to the land issued by the United States probably went to mid stream, and if not conveyed, remain in the heirs of the Patentee. However, in any event, title to Bubbly Creek is not in the City or the State except by some express land grant. Therefore, to answer question one specifically, the title holders to land abutting Bubbly Creek either have title to mid stream or have riparian rights. The action contemplated by the U.S. Army Corps of Engineers cannot be termed accretion. Rather, it is a land fill program and title to the land fill would stay in the underlying ownership. Consequently, the owner would be entitled to compensation, (a) to the taking of his land, (b) to damages to the remainder by cutting off his riparian rights. On the other hand, if title by the abutting owner was owned merely to the bank of the stream, the owner would be entitled to compensation for damages to his riparian rights.

2. The owners of abutting lands and probably inland lands, also have a right of drainage which might be impaired by the filling of the creek, and may have a suit for damages of the same.

3. The owners may be damaged by noxious odors and vapors which may affect their use of the property and may enjoin a threatened use. *State of Missouri vs. State of Illinois*, 180 U.S. 208.

Our answer to the Bubbly Creek Site may also answer your question where relevant, concerning other sites proposed by the U.S. Army Corps of Engineers.

SKYWAY RATE INCREASE BY COURT ORDER

(*Commissioner, Department of Streets and Sanitation—
J. P. P.—December 15, 1977*)

On December 12, 1977, Judge Frank J. McGarr entered an Order in the United States District Court increasing automobile tolls on the Skyway to 60¢ and the truck axle toll to 50¢, with no change in the discount schedule. This order was entered after DeLeuw Cather & Co., in a report required by the Court, recommended an automobile rate of 60¢ and a truck axle rate of 45¢. A copy of said Order is forwarded herewith.

At a hearing on October 7, 1976, Plaintiffs had offered evidence supporting a 50¢ axle rate. On the basis of all of the testimony submitted, and the rates recommended by DeLeuw Cather & Co., it appears that there is no basis for an appeal.

You will note that the Order requires the increase be carried into effect by January 15, 1978 at 12:01 A.M. Mr. Richard McGreal of your staff was in Court at the hearing and is aware of the provisions of the Order.

Inasmuch as this is a Judgment Order by the United States District Court, it will not be necessary to have an ordinance passed by the City Council. However, we recommend you notify them of said order, and how it will be put into effect.

APPELLATE BRIEF PRINTING COSTS

(*Attorney General, State of Illinois—J. A. S.—
February 8, 1978*)

This is in response to your letter of January 31, 1978, in which you enclosed a bill and invoice for printing costs involved in the case entitled *Finish Line Express v. City of Chicago*, No. 77-1029, now awaiting decision before the Illinois Appellate Court. In your letter you state that the City of Chicago is chargeable for one half of the costs (\$149.60) of the printing of the brief filed on behalf of the State of Illinois.

We disagree with this analysis. Although the City of Chicago was also an appellee in this case along with the State's Attorney of Cook County, the Appellate Court ordered that only the Attorney General should file a brief and argue the cause before the court. At no time prior to printing was the brief

filed by your office sent to the City of Chicago for comment, nor was any advice sought as to the position of the City prior to oral argument. Indeed, the brief itself states that it is the "Brief of Defendant-Appellee Scott." It was not filed as a joint brief.

Under these conditions it is apparent that your office did not consider the City to be party to this brief until the printing bill arrived. We also note that you do not seek any reimbursement from the State's Attorney of Cook County, also an appellee. We therefore decline to pay one half of your office's printing in this matter.

FAIR MARKET VALUE OF PROPERTY IN CONDEMNATION PROCEEDINGS

*(Chairman, Committee on Finance—E. L. N.—
May 22, 1978)*

Negotiations were commenced to acquire the subject property in connection with the Prairie Avenue Historic District Project being administered by the Department of Public Works of the City of Chicago.

After its extensive negotiations with the owner's attorney, Thomas T. Burke, the owner rejected all offers. Accordingly, condemnation proceedings were instituted to acquire the said property on March 24, 1977. Pre-trial conferences, discovery interrogatories, and depositions were taken. The owner granted the City of Chicago, during the pendency of the litigation a Right of Entry in order to commence certain improvements necessary for the district.

On March 10, 1978, this matter came on for trial before the Honorable Arthur L. Dunne and a jury was duly impanelled to determine the issue of Just Compensation.

The original appraisals made on behalf of the City of Chicago can be summarized as follows:

Mid America Appraisal and Research Corporation	\$ 200,000
William A. McCann and Associates	213,000
Harry S. Cutmore and Associates (Immoveable Equipment)	29,770

Copies of the said appraisal reports are transmitted herewith.

At the trial of the case the City offered the testimony of the following witnesses:

James Krueger, Mid America Appraisal and Research Corporation who indicated that in his opinion the value of the subject property including immoveable equipment was	\$ 229,000.00
William A. McCann who indicated that in his opinion the Fair Cash Market Value of the property including immoveable equipment was	\$ 248,000.00

The City also obtained a witness specializing in industrial type property, namely: Bud Simbord in whose opinion the value of the property was \$225,000.

The City also offered in evidence a sale of comparable property which was located at 2003 So. Indiana Avenue, immediately south of the subject property. Although the comparable property sold in August of 1975 was larger, and sold for \$185,000, the Court denied the admissibility of the sale of the said comparable property.

The owner, through its attorney, offered the following evidence of value:

Timothy Sullivan,
A Real Estate Broker, specializing in land
assemblage for gas stations indicating that in his
opinion the Fair Cash Market Value was \$ 578,000

Gerald O'Malley,
Associated with the Firm of Bennett and
Kahnweiler, who indicated that in his opinion the
Fair Cash Market Value of the subject property was \$ 620,000

The owner offered as a comparable sale the following property:

6601 So. Halsted—sold June 12, 1973 on 60,000 Sq. Ft. and improved with a 22,500 Sq. Ft. building at a sale price of \$500,000. The Court refused to admit the offered sale on the ground that the property was dissimilar in size, shape, and location.

The said case went to a jury on the issue of Just Compensation and the jury returned a verdict in the amount of \$400,000 representing the Fair Cash Market value of the said property as of March, 1977, the date of the filing of the Petition to Condemn.

Our office proceeded to file a Motion for New Trial primarily on the ground that the comparable sale offered by the City was similar and should have been admitted into evidence. The Court, on March 16, 1978, denied the Motion for new trial.

It is my opinion as trial counsel that there is no reversible error in that the trial Court has great latitude and discretion with respect to the admissibility of comparable sales. The Appellate Court has stated as follows with respect to condemnation cases:

"It is a well established rule in condemnation cases that when the jury has viewed the premises and the amount of the verdict is within the range of the evidence, the verdict of the jury will not be disturbed unless the record clearly shows that it has been influenced by passion or prejudice or unless there was a clear and palpable mistake. See, e.g. *Trustees of Schools v. LaSalle National Bank* (1961), 21 Ill. 2d 552, 173 N.E.2d 464; *Department of Public Works and Buildings v. Lambert* (1952), 411 Ill. 183, 103 N.E.2d 356. In addition, even the improper admission or exclusion of value evidence does not constitute reversible error when there is other evidence of value on both sides and the jury has the opportunity of weighing the conflicting evidence. *Trustees of Schools v. LaSalle National Bank*, supra."

I recommend for your approval the acceptance of the judgment order in the amount of FOUR HUNDRED THOUSAND and NO/100 (\$400,000.00) DOLLARS for the acquisition of the property herein described, and that the City Comptroller and the City Treasurer be authorized and directed to pay the sum of FOUR HUNDRED THOUSAND and NO/100 (\$400,000.00) DOLLARS plus statutory interest from March 14, 1978 when approved by the Corporation Counsel.

We transmit herewith a proposed Council Order.

ORDERED that the Corporation Counsel in accordance with his recommendation of May 22, 1978 is hereby authorized to acquire the following described property needed for the Prairie Avenue Historic District Project at 1801-34 South Indiana Avenue, to-wit:

Parcel No. 6
1801-31 South Indiana Avenue

Lot 34 (except the West 34 feet thereof taken for street), Lot 35 (except therefrom the West 34 feet thereof), Lot 62 (except the West 34 feet thereof taken for street), the North 55 feet (except the West 34 feet thereof) of Lot 61 except that part taken or used for alley) in Block 9 in the assessor's division of the South West fractional $\frac{1}{4}$ of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Lots 1, 2, 3 and 4 (except the West 34 feet taken for widening of Indiana Avenue) in Charles Busby's subdivision of Lots 31, 32 and 33 in Block 9 in assessor's division of the South West Fractional $\frac{1}{4}$ of Section 22, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

in the amount of FOUR HUNDRED THOUSAND and NO/100 (\$400,000.00) DOLLARS plus statutory interest from March 14, 1978 and the City Comptroller and the City Treasurer are authorized and directed to issue vouchers and pay the amount when approved by the Corporation Counsel from appropriations made from Fund No. 616.

INDEPENDENT CONTRACTORS—
CETA EMPLOYEE

*(Commissioner, Department of Water and Sewers—
R. F. F.—August 14, 1978)*

We have received your letter inquiring about the Department of Water and Sewers' liability for reimbursement of expenses. You state that an artist is preparing a sculpture for the department. The artist's salary is paid by funds provided by the federal government (CETA program), but materials and other expenses are the responsibility of the department. You inquired of the department's liability if it reimburses the artist for the expense of renting additional studio space for the preparation of the sculpture.

In regard to the additional studio space, the artist is an independent contractor, not an agent of the City of Chicago. It appears that the artist prepares the sculpture, at least in part, in his own premises, and on his own time and at his own pace. He, not the department, chooses the premises, the materials and the manner in which the sculpture is to be construed. The department does not supervise the manner of the preparation of the work of art. This arrangement has the attributes of a "independent contractor," not an agency relationship.

Because the artist is an independent contractor, he, not the department, is responsible for all acts carried out in connection with the additional studio space which is to be rented. There is little or no potential for liability on the part of the Department of Water and Sewers.

If you have any further questions, please do not hesitate to ask.

PUBLIC INTEREST LIMITATION ON RIGHT OF PRIVACY

(Commissioner, Department of Planning, City and
Community Development—R. F. F.—August 16, 1978)

This is in answer to your letter concerning the rights of persons appearing in photographs to be reproduced in a forthcoming departmental publication. You state that the community facilities and services section of the Department of Planning, City and Community Development is producing a publication which will contain photographs of various features in Chicago neighborhoods. The publication will be sold or distributed to the general public. You asked what your responsibilities are to persons on the public way at the time the photographs are taken and who may appear in the booklet.

If the photographs are published for their informational content, they are of legitimate public interest and the persons appearing in the pictures are incidental to the subject matter of the photograph, no rights are violated by the publication of the photograph.

The question has arisen previously and the Illinois Courts have had occasion to rule on similar questions. Ordinarily.

"A person may not make an unauthorized appropriation of the personality of another, especially of his name or likeness, without being liable to him for mental distress as well as the actual pecuniary damages which the appropriation causes." *Eick v. Perk Dog Food Co.*, 347 Ill. App. 293 (1952)

This statement applies only to those cases in which the likeness is used for commercial purposes. See *Bradley v. Cowels Magazines, Inc.*, 26 Ill. App.2d 331 (1960); *Carlson v. Dell Publishing Co.*, 65 Ill. App.2d 209 (1965). Even in the *Eick* case, the court stated that "The right of privacy is, of course, limited in cases of express or implied consent and in areas of legitimate public interest." A person walking on the street has no expectation of privacy and cannot object to a non-exploitive use of a photograph containing his picture.

The "legitimate public interest" is illustrated by the case of *Buzinski v. The Do-All Company*, 31 Ill. App.2d 209 (1965). In that case, a photo of an unusual mobile home appeared in a magazine. The plaintiff, an employee of the manufacturer, was depicted beside the mobile home in the photograph. He maintained that the unauthorized use of his photograph was an invasion of privacy.

The court noted that publication of a photo of the new mobile home was a legitimate public interest and did not violate the plaintiff's right of privacy. "The public interest limitation on the right of privacy includes . . . any informational material of legitimate public interest." The court compared the case before it to a situation in which a bystander was captured in a photo of a fire, an interesting building, or a new model car. The right of privacy would not extend to such cases unless the likeness was commercially exploited. The court also considered it important that the plaintiff's appearance was reasonably related to the subject of the picture.

Merely selling a book containing such photographs does not constitute "commercial exploitation" if the by-standers' pictures are incidental to the main purpose of the photographs. *Leopold v. Levin*, 45 Ill.2d 434 (1970) held "That books, newspapers, and magazines are published and sold for profit

does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment." See *Time Inc. v. Hill*, 385 U.S. 374, 397.

In the situation you describe, even if the publication is sold, the photographs of the individuals on the public way are not themselves the subject of commercial exploitation. This is in contrast to the case of *Annerino v. Dell Publishing Co.*, 17 Ill. App.2d 205 (1958), in which a magazine published a story describing the death of a police detective. In addition to the story, the magazine, ran a photo of the grieving detective's wife.

The court held the photograph was not part of the factual account and was not published for its informational value. Ruling that the story appealed to the "idle and prurient," but was not essentially a vehicle of information, the court stated that the publisher was not entitled to "overstep the bounds of propriety and decency and thereby justify an invasion of the solitude of the individual."

In summary, persons appearing on the public way have only a limited property in photographs taken of them. If they are a part of the street scene, and the photographs are published for legitimate informational purposes, of which the person's appearance is only incidental, such photographs may be published without obtaining the consent of the person appearing in the photograph. In the context you describe, the photographs would appear to meet the above criteria. Similarly, they are obviously not published for the purpose of commercially exploiting the images of the person photographed.

TITLE TO PURCHASED BOATS GRANTED BY DECREE

(*E. D. B., District Judge—R. L. H.—*
November 7, 1979)

Pursuant to Consent Order entered by Your Honor in the above entitled matter on March, 1979, and in full and complete reliance upon said Order, and especially paragraph 4 thereof, reading as follows:

"4. Upon the payment of the purchase price as aforesaid for the two (2) police patrol boats, the City of Chicago shall receive title thereto free and clear of all liens and encumbrances or other charges of the Debtor, SBA, BTNB or any other party whatsoever."

The City of Chicago delivered its check to King's Craft, SBA, and BTNB, and received what purported to be title to said craft "free and clear of all liens."

When the City of Chicago attempted to take possession of the two patrol boats from Rodi Boat Company, the location set forth in paragraph 2 of said Consent Order, Rodi refused to release said craft and claimed a lien against said craft in the sum of \$1,947.06 for labor, materials, and storage incurred prior to the March 21, 1979, date on the said Consent Order.

Since the City of Chicago purchased two boats "... free and clear of all liens and encumbrances ... whatsoever ...", and totally relied on the aforesaid Consent Order when we issued our check in payment we are at a loss at this time as to what to do to obtain possession of our craft short of being forced to pay an additional sum of money therefor.

We discussed the matter over the long distance phone with Mr. Cockran, one of King's Craft's attorneys, and he said that it was King's Craft's prob-

lem, not his, and we should discuss the matter with Mr. Lazzara. Another long distance call was placed to Mr. Lazzara and his final words were to the effect that we purchased the craft as is and where is, and that if it will cost additional money to physically place the craft in our possession, it should be our money, not his, and we should not bother him on this subject any more.

In view of the language of the Consent Order, it is our position that King's Craft, Inc., is responsible for the payment of the Rodi bill in order to be able to convey title "free and clear" to us. We do not believe it is our obligation to hire counsel in Alabama to so petition the Court on our behalf and/or to travel to Alabama ourselves since the cost therefor may approximate or possibly exceed the lien claim involved and especially since there is no question that the Rodi lien claim arose totally prior to the date of the said Consent Order and transfer of title to us.

It is our current understanding as well, at this time, that Rodi had submitted a claim in the Bankruptcy proceeding on or about March 14, 1979, prior to the March 21, 1979, Consent Order such that all of the parties to the said Consent Order, King's Craft, SBA, BTNB and their respective attorneys, were aware of said claim and understood that said claim against the boats was to be taken care of or had been taken care of under the "free and clear" provision of paragraph 4 quoted hereinabove.

We would hope that the above cited facts would be sufficient for an Order to be entered on the Court's own Motion providing for King's Craft to pay Rodi the amount claimed with an additional Order upon Rodi to turn over possession of the two boats to the City immediately.

If such an Order is not possible, we respectfully request your Honor to advise us what we must do to obtain our boats.

INJUNCTION ORDERING PROMOTION OF POLICEMAN

*(Superintendent of Police—P. L. B.—
December 13, 1979)*

On September 24, 1979, the City of Chicago filed a Petition for Leave to Appeal to the Illinois Supreme Court from an adverse decision of the appellate court rendered on July 30, 1979. This petition was denied on November 29, 1979, thereby foreclosing any further judicial review of this matter.

Plaintiffs, John Morrissey, Gerald Weber, and James Gilbert filed a complaint seeking an injunction ordering the Superintendent of the Chicago Police Department to promote plaintiffs. The complaint alleged that plaintiffs were Chicago Police Officers who had taken promotional examinations and had been placed on the list of eligibles for promotion. Each plaintiff alleged that he was wrongfully passed over for promotion in that persons who ranked lower on the list of eligibles had been promoted.

On October 7, 1977, plaintiffs were granted a temporary injunction ordering the Superintendent of Police to appoint plaintiffs to training classes, and, at the appropriate time, to their respective ranks. Subsequent to the court's ruling, the City agreed to promote Morrissey and Weber, and therefore, they were no longer parties to the suit. On December 9, 1979, judgment was entered in favor of plaintiff Gilbert.

The appellate court affirmed the judgment of the circuit court and held that at the time Gilbert was passed over for promotion Chapter 24 of the Illinois Revised Statutes par. 10-1-13 was controlling law. It was our position that chapter 25.1 of the Municipal Code of Chicago and rules promulgated thereunder applied to plaintiff.

Pursuant to the order of the appellate court, Gilbert must be promoted to Lieutenant of the Chicago Police Department.

Section D. BONDS

DISPOSITION OF BALANCE OF AIRPORT GENERAL CONSTRUCTION FUND

(Acting Commissioner of Public Works—
R. L. H.—September 13, 1973)

Your letter of August 14, 1973, in the above entitled matter requests an opinion as to the legality of using funds remaining in the General Construction Fund from the original Bond Issue in order to *restore* landscaping at the Airport originally proposed and installed with the said bond issue.

We have reviewed the original Bond Ordinance and the letter to you of July 19, 1973, from Acting City Comptroller Otto H. Loser and we find as follows:

1. Landscaping was proposed as part of the original work to be done at O'Hare and said landscaping was in fact done.
2. All work at O'Hare proposed under the original bond issue has been completed and all contracts therefor have been closed out.
3. Section 2.02 of the original bond issue ordinance provides that redemption of bonds from funds other than revenues (such as the Sinking Fund) may commence on January 1, 1974.
4. Section 3.01 of the original bond issue ordinance (properly quoted by Mr. Loser in his letter to you) provides that any funds in the General Construction Fund Account for which no commitments have been made for the construction of additional improvements (such as restoration of landscaping) on a date six months prior to the first date on which Bonds shall be redeemable from the Sinking Fund *shall* be deposited in said Sinking Fund.

It is our opinion, pursuant to the foregoing, that since the date set forth in Section 3.01 of the Bond Ordinance has already passed and since funds in the General Construction Fund Account have *not* been committed for the additional landscaping work you are currently contemplating, the funds in the General Construction Fund Account remaining from the 1959 and 1961 A & B O'Hare Revenue Bond Issues cannot be now used for any further construction of any kind or nature but must be transferred to the Sinking Fund as set forth by the Acting City Comptroller.

We suggest, therefore, that you comply with Mr. Loser's request to you dated July 19, 1973, and obtain for him the requisite Certificate of Completion.

If we can be of any further service to you in this matter, please advise.

REPLACEMENT OF LOST BONDS

*(Acting Attorney, Board of Education—
R. L. H.—January 31, 1974)*

Your letter of November 8, 1973, in the above entitled matter directed to the Corporation Counsel has been referred to the undersigned for review and reply.

We have reviewed the statutory provision cited in your letter relating to the replacement of lost bonds (Ch. 98 § 261 et seq.) and have, in addition, met with Francis Butler, Esq. of your office to review the factual situation and discuss the legal ramifications.

The initial question raised in our review of your letter relates to the applicability of the Bond Replacement Act to the specific loss referred to therein since the loss occurred in 1967, was discovered in 1968, and the Act did not become effective until July 10, 1971. Our research on this issue determined that Ch. 26, § 8-405 of the Illinois Revised Statutes (Commercial Code) provides a procedure for the replacement of lost, destroyed and stolen securities quite comparable to the Bond Replacement Act's procedures and requirements. Although a similar procedure is available under this Section of the Commercial Code, we believe that the procedures of the Bond Replacement Act should be followed especially since it refers specifically to the replacement of bonds issued by government bodies and since the request for replacement of the bonds was not made until after the effective date of the Act.

Since this question has been resolved, we will address ourselves to the three questions raised in your letter. The first question is whether the afore-said statute covers replacement of Board of Education bonds. Since the Act refers to bonds issued by local governmental entities as defined in the Tort Immunity Act (Ch. 85, § 1-206 et seq.), and since boards of education are included in the said definition, this statute does apply.

Your second question relates to the Mayor and City Comptroller executing the replacement bonds. A reference to § 264 of the statute reveals a requirement that the replace bond be executed by the same officers who executed the original. Therefore, execution by the Mayor and City Comptroller are required.

Your third question requests advice as to who is to be indemnified upon issuance of the replacement bonds. Since the original bonds were in fact issued by the Board of Education of the City of Chicago and executed by its President and Secretary; since the original bonds were countersigned by the City of Chicago and executed by its Mayor and City Comptroller, and since the statute requires indemnification of the issuing authority and the bank or banks where the bonds are payable, it is our opinion that both government bodies (City and Board), their respective signator officers and any and all banks where the original bonds are payable be named in the indemnity bond.

This last question raises another question that was discussed with Mr. Butler of your office. This relates to the fact that the current owner of the last bonds is the Federal Insurance Company which is willing to post its own indemnity bond as principal without other surety. Although Federal Insurance Company is an extremely well established company with authority from the federal government to write bonds of up to 25 million dollars for individual ventures, it would be bad precedent to allow a claimant for replacement to be

a self insurer on an indemnity bond. It would, therefore, be our opinion that the "adequate security" referred to in the statute can only be met by an indemnity bond executed by *both* the owner of the lost instruments as principal and a qualified corporate surety as surety, principal and surety not being the same.

Although neither the "sufficient indemnity bond" set forth in the Commercial Code nor the "adequate security" set forth in the Bond Replacement Act are further delineated as to the meanings of the words "sufficient" or "adequate" we believe, along with your office, that an indemnity bond in a sum twice the value of the lost investments is a reasonable requirement and meets a reasonable interpretation of the aforesaid words in both statutes.

Mr. Butler and the undersigned also discussed the procedure for issuance of the replacement bonds. It is our opinion that since authority was given both by the Board of Education and the City Council for the issuance of the original bonds and for the respective officers of each body to execute same and since the statute clearly states that "... issuing authority shall issue a replacement bond ...", it is our opinion that no action by either body is necessary to give further authority for the respective officers to execute the replacement bonds.

We would suggest that upon your receipt of the necessary documentation of loss, ownership and the indemnity bond from the claimant, said materials be forwarded to our office for review and concurrence that the statutory requirements have been met. Upon receipt of our approval, the Board's officers can execute the replacement bonds and, upon submission to us, the signatures of the Mayor and City Comptroller will be affixed thereon.

If there are any further questions in this matter, please advise.

SHUTTLE BUSES, FARE CHARGE

*(Supervisor of Parking Administration, Bureau of Parking
—R. L. H.—June 10, 1974)*

We have reviewed your request of April 2, 1974, in the light of the Ordinance Authorizing the Issuance of Parking Revenue Bonds as passed by the City Council on September 18, 1952, as amended.

It is our opinion that the installation of a fare box and the charge of 10 cents per ride on the shuttle bus from Parking Facility No. 9 would be legally permissible.

It is our further opinion, however, that the feasibility of this proposal, both from a practical and an economic standpoint, is not a legal question but is solely a policy decision to be made by the Bureau of Parking.

CHAPTER XI—CITY PROPERTY

Section A. REAL ESTATE

ASSIGNMENT OF PARKING FACILITY AGREEMENT

*(Commissioner, Department of Aviation—R.L.C.—
November 27, 1973)*

Your letter of October 18, 1973 forwarded correspondence and supporting material from Allright Auto Parks, Inc. requesting your assistance in assigning their rights as parking facility operator at Chicago O'Hare International Airport to a subsidiary Illinois corporation.

Allright Auto Parks, Inc. is a Delaware corporation, with its principal place of business in Houston, Texas. They have now formed a new wholly owned subsidiary entitled "Allright Illinois, Inc." for the purposes of taking over the rights, duties and obligations under the Agreement with the City of Chicago dated June 22, 1973.

Article II of Part I of the Parking Facility Operating Agreement provides for City Council approval prior to any assignment or transfer of the Agreement. Inasmuch as the parent corporation agrees to guarantee all performance and payment due the City under the Agreement, I believe such a request to be reasonable.

If you concur in this judgment, you should forward request for assignment by Allright to the City Council for its consideration and action.

COMPENSATION FOR LEASEHOLD IMPROVEMENTS

*(Commissioner of Aviation—R. L. H.
March 7, 1974)*

Your letter of recent date requests our opinion as to the legal amount due to Mr. Longo pursuant to the lease and appraisal report attached thereto.

Compensation to Mr. Longo on the termination of his lease at O'Hare arises from the language of Article VIII, "Property Rights Upon Termination," which provides that in the event the City chooses to purchase the Lessee's "*furniture, furnishings, fixtures and equipment*" (emphasis added), the City must advise the Lessee of its intention and the parties then shall agree on the purchase price, said price being the fair market value of said items. This Article also provides that if the parties cannot agree on the purchase price, each party shall appoint an appraiser; the two appraisers so appointed shall select a third; and the decision of the three appraisers as to fair market value shall be binding on both parties.

We assume from the appraiser's report submitted to us that it was your position that it would be to our advantage for the City's offer to Lessee to be based upon an appraisal report. We believe, however, that the appraiser went farther than the lease provides insofar as he also set a value on lease hold improvements relating to plumbing and electrical work.

Accepting the appraiser's report at face value for the items for which compensation is provided under Article VIII of the lease, it is our opinion that the lessee, Mr. Longo, is entitled to the sum of \$8,800. If agreement cannot be reached at this figure, the procedure for appointment of the three appraisers should be commenced.

We did discuss the question of the leasehold improvements with members of your staff and it is our understanding that it is Mr. Longo's position that he was forced to bring water lines into his leased premises initially from the basement rather than to carry his waterline connections to the City's stubs within his premises. He states that he was advised that if he did this work he would be compensated therefor. Not being present at the time of these discussions and not having any knowledge of the general arrangements made with the initial concessionaires as to source of water connections, we cannot comment on Mr. Longo's contention. Sufficient to state, however, there is nothing in Article VIII which provides compensation therefor and, in the event he is found to be entitled to some compensation for this work, it will have to come from some other source and not be repaid to the City (as the compensation under Article VIII will be) by the new barber shop concessionaire.

We will also note that under the terms of the lease, Mr. Longo was responsible for the connection of water meters and for electrical rearrangements, two of the items valued in the appraiser's report on leasehold improvements.

If we can be of any further service to you in this matter, please advise.

FAA CONTROL TOWER LEASE— INDEMNITY PROVISION

(Commissioner of Aviation—R. L. H.—April 22, 1974)

Returned herewith is the above cited proposed form of Agreement submitted to us for review and comments.

Your letter indicated that this Agreement form had been submitted to you by the FAA and our delay in replying has been due to our attempts to make an addition to the Agreement providing for an indemnity provision.

Since the U.S. Government, like all government bodies, is not prone to indemnify others, it took a decision in Washington to finally advise us that they would not agree to such a provision in this Agreement.

Although we would feel more secure with such a provision included, it is not that serious an omission at this time that could cause any problems, and especially since the construction of the new tower provided for therein is almost completed.

It is therefore our opinion that this agreement is legal and proper and an ordinance authorizing execution may be prepared for City Council approval.

We would suggest, however, that the Commissioner of Aviation be added as a party to receive notices in Paragraph 14.

ABATEMENT OF MINIMUM RENT

*(Commissioner of Aviation—R. L. H.—
March 28, 1974)*

Your letter of March 17, 1974, requests our opinion regarding the request of Fred Harvey, letter attached, to waive payment of the minimum rental for their leased facilities at Midway Airport and only pay the percentage rental based on sales volume due to the drastic cutback in air services and their resultant drop in business volume.

We have reviewed the Fred Harvey lease and find nothing therein contained which would permit such a waiver. We note that the last sentence of paragraph 5(c) reading as follows:

“ . . . In the event that the Airport shall be closed for any period of time by any order or direction of the City or any other government authority or agency, or by any order or direction of any court of competent jurisdiction, the Minimum Rent, if any, shall abate for the period of such closing.”

could be cited as reason for abatement of the Minimum Rent, since the closing down of most of the scheduled air services was done either by order of the Civil Aeronautics Board or, at least, with their knowledge and tacit approval.

The lease provision, however, refers to “. . . Airport shall be closed . . .” and, although the level of air carrier service is minimal, the Airport is *not* closed. It is therefore our opinion that this lease provision cannot be utilized to Abate the Minimum Rental.

In the event it is your opinion that it is only fair and equitable to abate this Minimum Rent due to the lack of activity at Midway, the only way to effect this abatement would be by Lease Amendment approved by the City Council. Whether or not the Council would be receptive to a decrease in revenue from Midway Airport, we are not in a position to judge.

If we can be of any further service to you in this matter, please advise.

DUTY TO PROVIDE WATER SERVICES —LEASED PREMISES

*(Commissioner of Aviation—R. L. H.—
July 29, 1974)*

We are in receipt of your letter and attachments of July 22, 1974, in the above entitled matter and, pursuant to your request, have again reviewed Mr. Longo's lease.

Our review indicates that the lease is silent as to whose obligation it is to bring a source of water to the premises leased for a barber shop. The lease does provide, however, that it is the Lessee's obligation to connect water meters to the hot and cold water lines to the concession (Art. IV, Par. B, subpar. b) and that among the leasehold improvements contemplated to be done by the Lessee at his own expense, sinks are included (Art. IV, Par. B). There are no other comments in the lease regarding plumbing.

It is Mr. Longo's position that the question of bringing water lines into

the leased premises was discussed at the time of execution of the lease and two alternatives were mentioned, both of which provided for City payment for this work. First, the City's plumbing contractor could bring lines up from the basement into the leased premises and Mr. Longo's plumbing contractor would then do the internal plumbing work including the attachment of the water meters. The second alternative provided for Mr. Longo's plumbing contractor to do all of this plumbing work including bringing up the water lines and Mr. Longo would be reimbursed for the cost of this work which was the City's responsibility. Since the second alternative appeared to be most practical, this procedure was followed. Mr. Longo requested reimbursement on a number of occasions but did not press the issue while he was still a tenant. Upon termination of his lease with the City, the issue of this reimbursement became important to him.

Since a barber shop cannot operate without water, it is logical that it was the City's obligation to provide a water source in the premises leased for a barber shop and not require the Lessee to pay for bringing water lines up from the basement into said premises. Once the water supply was present, there is no question that all other plumbing work required for the barber shop operation was the Lessee's responsibility including the specific item of attachment of water meters referred to in the Lease. The logic of Mr. Longo's position is borne out by the fact that the water meters are installed within the leased premises and all plumbing connections to the sinks begin at these meters.

It is our understanding that you have reviewed Mr. Longo's contention and find that it is substantially correct. We also understand that you have reviewed the bills submitted to Mr. Longo for the initial plumbing work in the leased premises and find that approximately \$5,000 was the cost of bringing the water source from the basement into the leased premises. Your request, then, refers to the legality of paying Mr. Longo the aforesaid sum of \$5,000.00.

Pursuant to the foregoing, it is our opinion that payment to Mr. Longo as outlined would be legally proper.

The attachments to your letter are herewith returned to you.

If we can be of any further service to you in this matter, please advise.

OWNERSHIP OF ROAD-BED RECLAIMED FROM LAKE

*(Commissioner, Department of Streets and Sanitation
—W. M. Z.—August 14, 1974)*

Please refer to your communication of August 2, 1974 which reads as follows:

"In conjunction with the pending purchase of the South Shore Country Club by the Chicago Park District, questions have arisen concerning proposed roadways in this and adjacent areas. The Lakefront Plan recently published by the Department of Development and Planning proposes considerable landfill in this area of the lakefront, which will in effect unite the Jackson Park, Country Club, and Rainbow Park recreational areas.

"We have noted that existing City property maps in the area between 71st and 79th Streets show a *dedicated right-of-way* (generally 150 feet) for Lake Park Avenue. Part of this right-of-way lies east of the existing shore line, and part is in the area now known as Rainbow Park.

"One of the factors in determining future access through this area is the present status of this right-of-way for Lake Park Avenue. Would you have your staff determine whether this right-of-way is still available for street purposes, whenever additional land is filled in in this area."

We have examined the maps and plats with reference to this matter in our Bureau of Maps and find that Lake Park Avenue is a City street from E. 71st Street to E. Cheltenham Place, and that portion of Lake Park Avenue from Cheltenham Place to E. 79th Street has been vacated and is no longer the property of the City of Chicago.

It is our opinion that in the event the portion of the street under water is filled, the said road-bed created will become a portion of the street system of the City of Chicago.

To support our opinion we are enclosing herewith a copy of the Court in the case of *La Salle National Bank, Trustee, v. City of Chicago* which has recently been decided by the Appellate Court of the State of Illinois.

We are also enclosing a copy of the vacation affidavit and Plats No. 50, 53, 54 and 55. Please note the different widths of Lake Park Avenue between the streets referred to above.

INSTALLATION OF FUEL TANK ON LEASED PREMISES

*(Acting Commissioner, Department of Water and Sewers
—W. M. Z.—September 5, 1974)*

Please refer to your communication of August 26, 1974 which reads as follows:

"The Water Distribution Division leases a plot of land owned by the Beverly Bank. The Division wishes to locate a buried gasoline storage tank as well as electrical conduit to better service its equipment which is stored at this location.

"Certain questions arise as to this installation:

1. Are the alterations and improvement considered removable as outlined in the lease?
2. Will the installation of these items require additional approval from the Bank?
3. Will such improvements require insurance or a change in insurance that might exist for the benefit of the lessor?"

In answer to question 1., it is our opinion that the improvements are considered removable.

Answering question 2., it would not require additional approval from the Bank. However, it is our opinion that the Bank should be notified of our installations as the location of a gasoline storage tank should be provided to the landlord.

As to question 3., since the City is self-insured it will be necessary to make any changes in the lease.

LEASE OF NAVY PIER

*(Chairman, City Council on Finance—
R. L. H.—October 22, 1975)*

A general question was raised, after referral of the above-cited proposed lease to the Finance Committee, with reference to the authority of the City of Chicago to enter into leases of space at Navy Pier inasmuch as legal title to same has been conveyed to the Public Building Commission of Chicago.

Please be advised that this matter has been fully reviewed with the Commission, and it is our opinion that the City of Chicago, as the tenant of Navy Pier, has full authority to enter into any subleases of space therein that it desires.

Further, pursuant to the authority given to the City in its primary lease from the Public Building Commission, the City of Chicago may "lease" any space it desires at Navy Pier as "Landlord" to a "Tenant" and is not restricted to "subleasing" as "Tenant" to a "Sublessee."

Since it is imperative that the above-cited lease be approved as soon as possible to enable the tenant to obtain formal approval of this Exposition from the United States Department of Commerce as a "fair" and to enable the tenant to commence the sale of exhibit space internationally, we would appreciate whatever expeditious handling it can be given.

PURCHASE OF REAL PROPERTY
BY CITY

(P. Z.,—F. G. S.—November 5, 1975)

Your letter addressed to Mayor Richard J. Daley regarding real property you and your husband own, located at 5819 S. Honore Street, Chicago, Illinois has been referred to the Law Department for attention and reply. Your letter initially stated that the property in question was located in the vicinity of "58th and Wood St." We attempted and finally located the property at 5819 S. Honore.

We deeply regret that your husband is unable to use the building for his business purposes. We also regret to inform you that the City of Chicago is not at liberty to make the property purchase you suggest. The City of Chicago is in no position to accept properties, subject to taxes, and further to assume responsibility for possible costs of demolition should this become necessary.

For your information the undersigned had suggested that Mr. Joseph B. Meegan, Executive Secretary of the Back of the Yards Council contact you with a view to determining if this Not-For-Profit Local Community Group might have some use for the property. I believe Mr. Meegan called you and indicated that the Back of the Yards Council would explore the possibility of using the building and he would be in touch with you again.

In the event the Back of the Yards Council is unable to use the property, we suggest that you contact a real estate agent who might assist you in the management of disposition of the property in a way most beneficial to you.

AUTHORITY TO LEASE OR SELL— FACILITIES UNNEEDED

*(Acting Commissioner, Department of Streets and
Sanitation—H. F. W.—January 27, 1976)*

We wish to acknowledge receipt of your letter of December 23, 1975 in which you request an opinion as to whether or not your department may enter into negotiations for the lease or sale of the steam supply line owned by the City of Chicago. We have also reviewed Mr. James F. Donovan's letter of October 2, 1975 and Assistant Commissioner Louis P. Farina's Memorandum dated October 15, 1975. This steam supply main is presently being used to transport steam from the Southwest Incinerator to the Produce Terminal Corporation which in turn supplies steam to its customers.

Pursuant to the terms of an agreed order issued by the U.S. Environmental Protection Agency and approved by the Illinois Environmental Protection Agency, the Southwest Incinerator is scheduled to be phased out of operation on March 31, 1977. As of this date the City will no longer be generating steam at the Southwest Incinerator and will discontinue the use of this steam supply line. The city's contract to supply steam to Produce Terminal Corporation runs until September 15, 1978 which is 18 months later than the planned shut down date for the Southwest Incinerator. A municipality may sell and dispose of land, buildings, equipment and facilities which are no longer needed by such municipality. Upon the discontinuance of the operation of the Southwest Incinerator, the supply main will become an idle surplus facility and as such may be sold or leased by the City. Mr. Farina in his Memorandum indicated that your department has the statistical data to determine an equitable price for the proposed sale or lease of the steam supply main.

It is our opinion that the City of Chicago may enter into negotiations for the sale or lease of said main. It of course follows that the procedures established by the Municipal Code of Chicago and the departmental practices for sale of surplus facilities must be followed in the matter.

TITLE OPINION—O'HARE AIRPORT

*(Acting Commissioner, Department of Aviation
—J. R. P.—February 4, 1976)*

With regard to your request for a title on Parcels E1-E5, inclusive, at Chicago-O'Hare International Airport, please be advised as follows:

1. This opinion is rendered for the purpose of obtaining financial participation by the Federal Aviation Administration in the above cited project. The undersigned renders this opinion on the basis of the Title Insurance policies from the Chicago Title Insurance Company, the Certificate of Title from the Registrar of Cook County, an examination of the Court records in the eminent domain case involving said Parcels E1-E5, inclusive, and the laws of the State of Illinois. Copies of said Title Policies, Certificate of Title, initiating pleading, judgment order and award deposit receipts are forwarded herewith.

2. The legal description of each parcel is attached hereto as Exhibit "A."

3. The City of Chicago has fee simple title to all of the property described in Exhibit "A".

4. The objections outlined in the various title insurance policies and Certificate of Title are as follows:

- (a) Taxes for second installment 1974 and 1975. The City of Chicago is a tax-exempt body specifically with regard to its ownership of property for airports. (Ill. Rev. Stats. Chapter 120, Sec 500.9). Taxes become exempt on the date of filing of the Condemnation Petition by the Condemnor. In the instant case, the petition was filed on July 8, 1974. The City of Chicago eventually files a Tax Injunction Suit to enjoin any delinquent tax activity.
- (b) The lien of additional taxes for construction of new or additional improvements is not vital since the property is now vacant and has been for many years.
- (c) The right of appeal in the Eminent Domain Case No. 72 L 9115, Circuit Court of Cook County, Illinois, has been waived as part of the Judgment Order, and 30 days have elapsed since the entry of the Judgment Order without notice of appeal having been received by the City of Chicago.

The objections listed on the various title policies and the Certificate of Title could not affect the Project or the use and operation of the property for airport purposes.

The undersigned certifies that to the best of his knowledge there are no unrecorded easements, persons in possession claiming adversely, nor any other outstanding interests which may affect the title to said property.

It is the opinion of the undersigned that the City of Chicago holds Parcels E1 through E5 in fee simple, and said parcels are available to the City of Chicago for the use and operation of the Airport.

ACQUISITION OF PROPERTY

*(Chairman and Members, Committee on Finance—
E. L. N.—March 25, 1976)*

This is to advise that our office commenced negotiations for the acquisition of the above referenced property for the construction of a Senior Citizens Center and Health Clinic pursuant to the Community Development program.

The legal description of the subject property is as follows:

Lots 7 and 18, both inclusive, in Haussen's Subdivision of Lot 2 in Haussen and Seeger's Addition to Chicago, a Subdivision of Blocks 4, 5 and 14 of Davlin Kelly and Carrolls Subdivision of the North West quarter of Section 20, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Our office obtained appraisals in connection with the acquisition of the subject property and the subject appraisals which are transmitted herewith can be summarized as follows:

William A. McCann & Associates	\$220,000.00
Mid-America Appraisal and Research Corp	225,000.00

After extensive negotiations with the owner, Jewel Companies, Inc. the owner offered to convey the subject property for the sum of Two Hundred

Twenty-four Thousand and No/100 (\$224,000.00) Dollars. This offer of settlement was transmitted to the Mayor's Committee for Land Acquisition, and the subject settlement was approved on February 19, 1976. A copy of said approval is attached hereto.

A disclosure statement for Jewel Companies, Inc. has been placed on file with the Finance Committee of the City Council of the City of Chicago available for inspection.

I recommend for your approval the acceptance of the offer by the owner in the amount of Two Hundred Twenty-four Thousand and No/100 (\$224,000.00) Dollars for the acquisition of the property herein described, and that the City Comptroller and the City Treasurer be authorized and directed to pay the sum of Two Hundred Twenty-four Thousand and No/100 (\$224,000.00) Dollars to Chicago Title & Trust Company, when approved by the Corporation Counsel, from Community Development Funds.

We transmit herewith a proposed Ordinance.

PURCHASE OF CITY CONDUIT BY ILLINOIS BELL

*(Acting Commissioner, Department of Streets and
Sanitation—B. R.—April 19, 1976)*

Your letter of April 5, 1976, concerning the captioned matter, has been referred to the writer for reply. We have reviewed the proposed method of arriving at a fair purchase price for the 4 duct conduit which runs in Western Avenue from 75th to 81st Streets. It is our opinion that the computed purchase price of \$53,800.31 is reasonable and that the method by which said price has been derived is supportable. Should Illinois Bell propose a different method to compute a purchase price for the said conduit, this office would request that we be permitted to review the same.

It is our recommendation that any purchase by Illinois Bell of the City's conduit contain the following provisions:

- a) Illinois Bell will hold the City harmless from property damage and personal injuries arising from the use of the conduit upon the transfer of fee to Illinois Bell;
- b) That upon abandonment of the conduit by Illinois Bell, the Company, at its sole expense, shall remove the conduit and restore the pavement to its normal condition when requested to do so by the City.

EXECUTION OF LEASE AGREEMENT

*(Commissioner, Consumer Sales, Weights and Measures
J. K. M.—April 26, 1976)*

In reply to your Memorandum of March 31, 1976 as to whether a lease agreement for the leasing of parking spaces can be executed by your office or must be introduced in the City Council please be advised that City Council approval is required for the execution of any lease no matter how small the amount of money involved.

All proposed leases must be first submitted to the Comptroller prior to said lease introduction in the City Council.

We referred the lease submitted to our office to Michael Daly, Deputy Real Estate Agent for the City of Chicago who will contact your office regarding certain requirements necessary for the execution of the lease. If you wish to discuss this matter with Mr. Daly you can reach him on Centrex Extension 7141.

TERMINATION OF LEASEHOLD INTEREST BY DEFAULT

*(J. H. B., Trustee in Bankruptcy—H. F. W.—
May 26, 1976)*

We wish to acknowledge receipt of your letter of May 18, 1976 addressed to Mr. A. L. Rothengass of the Department of Aviation of the City of Chicago. In your letter you state you, as the trustee in bankruptcy of REA Express, Inc., have received an offer from Novo Airfreight Corp. to purchase the leasehold interest of REA Express, Inc. You further state that unless the City of Chicago indicates in writing to the contrary within ten days, that you plan on advising the bankruptcy court that the City consents to the assignment of the leasehold interest.

While it may be true that the REA Express Inc. has gone into bankruptcy, any and all interests that REA Express, Inc. may have had in the building located at the O'Hare International Airport were subject to the agreement entered into between the City of Chicago and REA Express, Inc. The real estate on which this building is located is a part of the airport and is owned by the City of Chicago. The building constructed on the airport property which was occupied by the leasee, under the terms of the agreement, became the sole property of the City of Chicago.

The leasehold interest of REA Express, Inc. was subject to the terms of the agreement and the provisions for termination or cancellation of said lease. Because of the acts and conduct of the leasee, the leasehold interest of REA Express, Inc. was terminated by the default of REA Express, Inc. Therefore, there is no "leasehold interest" of REA Express, Inc. which may be the subject matter of an offer by you as a trustee in bankruptcy to another freight company.

We wish to advise you that we are rejecting your proposal to submit an assignment of any interest in city property to the jurisdiction of the court since the bankrupt has no interest in city property. The real estate known as O'Hare International Airport and all buildings and structures located therein are the sole property of the City of Chicago and the rights and occupancy of any and all tenants are subject to the limitations and termination provisions of the lease agreements. REA Express, Inc.'s interest in the building which they formerly occupied at O'Hare Field has been terminated and, therefore, there is no leasehold interest accruing to REA Express, Inc. which can legally be the subject matter of an assignment for you to submit to the court for its approval.

The City of Chicago reserves, to itself, the exclusive right to negotiate any and all leases for City property.

ILLINOIS ATHLETIC CLUB SUBSURFACE SPACE

(*R. F. S.—W. M. Z.—October 26, 1976*)

Please refer to your letter of October 8, 1976, addressed to the Real Estate Division, City Hall, Chicago, which, in part, states as follows:

"As I mentioned to you in our telephone conversation, our office has been asked to represent the Illinois Athletic Club in connection with the ordinance passed by the City Council on May 5, 1976. Though you may be correct in your statement that the city does have title to the property taken, we would appreciate receiving something establishing that the city did, in fact, have title to that particular area."

In reply to your request we are enclosing herewith a Xerox copy of Chapter 105 § 333.52. We believe this Section of the Illinois Revised Statutes will answer your question.

ABATEMENT OF RENT DUE TO UNTENANTABILITY

(*Deputy Commissioner, Chicago Public Library—
R. L. H.—March 28, 1977*)

Your letter of March 11, 1977, with attachments, requests our review of your leases in the Mandel Building and our opinion as to whether or not a rent abatement is legally possible due to closure of the library for two-and-one-half days in January due to an electrical power failure.

Paragraph 2 of the primary lease provides in subparagraphs (a) to (d) inclusive that the Lessor is to provide Heat, Water, Elevator Service and Electricity, respectively. Further language in this Paragraph states clearly that if there is an interruption of any of said services due to repairs, renewals, improvements, etc., such interruption of services shall NOT render the Lessor liable to the Lessee for damages by way of rent abatement or otherwise.

Your letter indicates that for a 2½ day period in January, the Library was closed due to lack of heat (2a), lack of elevator service (2c) and lack of electricity (2d) and it appears that there can be no claim for rent abatement due to the interruption of these services because paragraph 2 clearly rejects said claim on these grounds.

Paragraph 14 of the primary lease, however, provides for abatement of rent if the building or the premises become untenable due to fire or other casualty. Since your letter indicates that the electrical power failure was caused by a fire, the claim for rent abatement now appears to have some validity.

It is our opinion, after full review of the various lease documents submitted to us, that you have a valid arguable claim for abatement of rent for the 2½ days the premises were untenable. The claim is not based upon interruption of any of the services itemized in paragraph 2 of the lease, but is simply based upon the fact that because of a fire in the building, the premises leased by the Library were untenable.

94th STREET EXTENSION CONSIDERED AN EASEMENT

*(Commissioner, Department of Streets and Sanitation
—H. A. T.—May 27, 1977)*

In your letter to this Department dated May 24, 1977, you submitted an ordinance adopted by the City Council on July 11, 1910, which provided for a 94th Street By-pass in lieu of the projected opening of 93rd Street across the Railroad Yard and Right-of-Way of the New York, Chicago and St. Louis Railroad Company in the area between Kenwood and Harper Avenues.

You pointed out that the roadway, as laid out, may not conform to the legal description in the ordinance and that the ordinance recites one course of 355 feet, which ran parallel to a spur track. The accuracy of this course is unascertainable, as the spur track is no longer in existence. Basically, your letter requests our construction of the ordinance adopted by the City Council on July 11, 1910 as to whether the City holds an Easement or a conditional fee simple title to the By-pass.

Section One of said ordinance uses the phrase "dedicated temporarily for street purposes." We would have difficulty in determining the nature of the estate to be granted if this was the sole phrase in the ordinance. However, Section 6 of said ordinance states "the title to said land in the meantime, shall remain in the Railroad Company, subject to the easement which the public is entitled to in all highways and subject to the control at all times of the City of Chicago."

It is clear that the term "said land" refers to the 30-foot strip shown on the plats as the curved section of the 94th Street By-pass. In addition, Section 6 provides that said strip of land shall revert to the Railroad in the event 93rd Street is extended. 93rd Street would be extended only after the City adopts a track elevation ordinance for said area and the Railroad will construct a subway underneath its tracks.

The intent of the ordinance seems clear an Easement is to be granted for a 94th Street By-pass. Said Easement is not perpetual. It is conditioned to terminate in the event 93rd Street is extended over the Railroad Yards in accordance with the terms of Section 6 of the ordinance.

It appears said ordinance agreement was a compromise settlement of litigation arising out of the City's attempt to extend 93rd Street across the Railroad Yards.

We should point out that the City Council, by ordinance adopted December 14, 1927, page 1529 of the Journal of the Proceedings, at the instance of the Board of Local Improvements, approved the opening of 93rd Street, between Blackstone and Vaughan Avenues. (Vaughan Avenue is the present Kenwood Avenue). We do not know what action, if any, was taken to implement said ordinance. In any event, the condition of Section 6 of the 1910 ordinance, as to the construction, completion and opening to the public of the Subway for travel, has not been carried out.

Our conclusion, from a reading of the ordinance of 1910, is, that the 94th Street extension constructed in lieu of 93rd Street, between Kenwood and Harper Avenues, over privately owned lands, is an Easement.

AMENDMENTS OF EASEMENT TO ALLOW OVERBUILDING

*(Commissioner, Department of Water and Sewers—
R. L. H.—July 6, 1978)*

Your letter of recent date requests our opinion as to whether an amendment can be added to the original easement agreement to allow overbuilding by the owner of the property.

We have reviewed the original easement and find an absolute prohibition against overbuilding. We note in your letter however, that you would have no objection to the overbuilding if the owner of the property would extend an existing 16-inch steel encasement pipe beyond the limits of the proposed building construction.

In view of the foregoing, it would be our opinion that the proper course of action would not be to amend the original easement but to enter into a new easement agreement superseding the original and providing for the encasement of the water main as consideration for allowing the overbuilding.

If the property owner is willing to pay for this encasement in exchange for being allowed to overbuild the easement, we would be pleased to draft the requisite easement agreement.

GRANT OF EASEMENT FOR OVERPASS

*(Hospital Vice President, Department of Business and
Finance—H. A. T.—September 25, 1978)*

On April 21, 1978, the City Council of the City of Chicago adopted an ordinance authorizing execution of a grant of easement for overpasses on Superior Street and Fairbanks Court. The delivery of the easement was contingent upon payment to the City of \$25,976.00 and co-insuring the City for its protection.

We have repeatedly advised Mr. Gabor Zsolnay that the City is ready to deliver said easements, subject to the above requirements and we have received vague assurances from him.

In the meantime, the overpasses have been constructed and you are presently trespassing on City property.

Please make some arrangement to acquire this easement within the next thirty days.

LIABILITY FOR REPAIR OF DOCK FACILITIES

*(Commissioner of Public Works—R. L. H.—
March 6, 1979)*

Your letter of recent date in the above entitled matter seeks our opinion as to whose responsibility it is to repair damages to the aforesaid dock facilities—the City or Mercury—said damages having been caused by an unknown hit and run vessel on the night of December 12, 1978.

To review the matters set forth in your letter aforesaid, a letter to you from Mrs. Agra's attorneys dated January 25, 1978 and telephone discussions both with members of your staff and Mr. Robert Agra, it is our understanding, as follows:

1) The Agra family, d/b/a Mercury Sightseeing Boats, has been tenants of the City's dock facilities on the South bank of Chicago River at the Michigan Avenue Bridge for many years, and have been totally responsible for the care, maintenance and repair of the dock and dock facilities at the said leasehold site for said time without question or objection.

2) Federal funds became available for beautification and improvement of the aforesaid docksite in 1978, and said improvements were done by the City with these EDA funds during most of the 1978 sightseeing boat season.

3) Mercury had used a wooden bridge/ramp type structure for the boarding of its passengers. When the City improved the dock as aforesaid in 1978, this structure was replaced with a similar structure made of much more expensive lumber and fittings with the belief that the new structure would last a longer period of time than the old, would require no maintenance whatsoever and would be more pleasing aesthetically.

4) It is this bridge/ramp structure that was seriously damaged the night of December 12, 1978, by an unknown vessel—four vessels admittedly were in the area but none admitted responsibility, and no accident report has been filed with the Coast Guard.

5) If the original bridge/ramp structure had NOT been replaced by the City and said structure had been damaged as the replacement structure has been damaged, there would be no question that repair of the damage was the responsibility of Mercury, and that has been admitted by Robert Agra.

6) Since the new bridge/ramp structure was merely a better replacement of the existing bridge/ramp structure, responsibility for repair of said structure remains with Mercury.

It would be our opinion that it is Mercury's responsibility to repair the damaged dock facilities. We do not believe, however, that the extent of such responsibility requires repair with the same quality of materials that were damaged. Repair with standard quality lumber (such as White Oak) and iron fittings instead of stainless steel would be acceptable subject to approval by your Department.

It is our further understanding that there still may be some federal funds available to the City for this repair work. If so, the City should proceed to make the repairs immediately. If not, Mercury should be advised that repair is their responsibility and they should proceed whenever they choose to do so. It is important to note that the sightseeing season begins about April 1, 1979, and in addition to the time needed for the actual repair work, a certain amount of lead time is necessary to order the necessary materials.

Mercury should be clearly advised that no matter who repairs the current damage, any and all maintenance and repair of the dock facilities in the future is its responsibility.

We believe that all available efforts should be made to determine the identity of the vessel causing the damage. A replacement cost of between \$10,000.00 and \$40,000.00 does not have to be incurred without the possibility of reimbursement from the guilty party.

If we can be of any further service to you in this matter, please advise.

**TAKING FOR COLUMBUS DRIVE
EXTENSION—COMPENSATION
SETTLEMENT**

*(Commissioner, Department of Public Works—
E. L. N.—June 18, 1979)*

Our office rendered opinions on October 4, 1978 and April 4, 1979, which set forth the legal basis for determining the value of parcel No. 7. The subject parcel is improved with a warehouse structure utilized to store paper for the production of the Tribune newspaper. The fee ownership of the land is held by The Chicago Dock and Canal Trust and the leasehold interest is owned by The Chicago Tribune Company, an Illinois Corporation. (See opinion of April 4.)

A meeting was held April 18, 1979 with representatives of the Illinois Department of Transportation and the Federal Highway Administration to assess the impact of the Court's order of March 15, 1979 on the method of valuating the subject parcel. It was the consensus that the opinion of April 4, 1979 and the recommendations contained therein should be implemented; and, accordingly, our office has obtained additional appraisal and engineering data to assist in determining a reasonable settlement of this complex acquisition.

There are two basic questions which must be decided prior to any recommended settlement: (1) Whether the cost to cure damages caused by the partial taking is less than compensation for reduction in market value of the remainder (2) A determination of the most economical method to mitigate damages to the remainder (cost to cure).

In order to resolve the issue of whether a "Cost to Cure Method" should be employed or compensation for damage to the remainder should be paid, our office directed Mid-America Appraisal and Research Company and William A. McCann & Associates to reappraise the property utilizing both methods.

A summary of their opinions as set forth in the attached appraisal reports is as follows:

<i>Mid-America Appraisal & Research Corporation</i>	<i>Cost to Cure</i>	<i>Compensation-Damage to Remainder</i>
Part Taken Award	\$1,700,000	\$1,700,000
Construction		
Easement Award	105,000	105,000
Damages to Remainder (including demolition)	—0—	5,400,000
Reconstruction of remainder	2,600,000	—0—
T O T A L	\$4,405,000	\$7,205,000
 <i>William A. McCann & Associates</i>		
Part Taken Award	\$1,700,000	\$1,700,000
Construction		
Easement Award	114,700	114,700
Damages to Remainder (including demolition)	—0—	7,000,000
Reconstruction of remainder	2,600,000	—0—
T O T A L	\$4,414,700	\$8,814,700

It is apparent that the "Cost to Cure Method" is the proper approach in an effort to mitigate damages in this acquisition. Accordingly, our office obtained additional independent engineering estimates predicated upon an assignment to determine the most feasible method to enable the Tribune to maintain continued uninterrupted operation, and the resulting cost.

Construction Economist Collaborative updated its prior estimate and as of May 3, 1979 indicated that the total cost would be \$2,647,019. Alfred Benesch & Company indicated that in its opinion the cost to cure would be \$2,539,686. (Copies of these reports have been submitted and reviewed by your engineering staff).

Extensive negotiations have been held between all parties in pre-trial conferences before the Honorable Arthur L. Dunne.

The following is the settlement which is acceptable to all parties:

Part Taken Award:	\$1,408,000
Construction Easement Award:	95,000
Damages:	<u>2,573,919</u>
T O T A L	\$4,076,919

The foregoing settlement should be compared with the approved appraiser's opinion of value, which indicated that the total compensation should be \$4,414,700. (See McCann's Report). From this total award, the Tribune will be paid \$2,573,919 as total compensation for damage to remainder. Dock and Canal Company has waived any claim for damage to the remainder in this condemnation proceeding.

The \$95,000 easement award should be compared with the \$105,000 Opinion of McCann and Mid-America. This sum shall be deposited as payment in full for the 2-year construction period required by your office. The award of \$1,408,000 for the part taken should be compared with the \$1,700,000 opinion of Mid-America and McCann.

It should be noted, however, that the recommended settlement with respect to the value of the part taken and the easement area is in the exact amount as previously approved by the State Department of Transportation.

Accordingly, our office recommends an administrative settlement in the amount of \$4,076,919 for the total compensation in connection with the acquisition of parcel No. 7, subject to the court's approval.

CITY ACQUISITION OF STATE OWNED PROPERTY

*(Commissioner, Department of Planning, City and Community
Development—E. L. N.—June 11, 1979)*

In your letter dated May 7, 1979, you expressed an interest in the City of Chicago acquiring that portion of the Chicago-Read Mental Health Care site, located in the City.

The site is roughly bounded by Narragansett, Montrose, Irving Park, and Oak Park Avenues and Forest Preserve Boulevard.

This property was conveyed to the State of Illinois by the County of Cook in 1912 (Dec. No. 5018677). The language of the conveyance transfers the land and all buildings and appurtenances thereof, used as the County Insane Asy-

lum, to the State of Illinois, to be used for the same purpose. I did not note any forfeiture or reverter provision in the deed.

Chapter 127, Sections 133(b)10 and 133(b)11 of Illinois Revised Statutes appear to confirm your information. Section 133(b)10 states the Administrator shall first offer surplus lands for sale at appraised value to municipalities and counties. Section 133(b)11 provides there will be no conveyances to local governments without giving preference to a state agency. We are attaching a copy of the relevant state statute.

We are not as confident as "State officials" that the County limitation in its deed to the State can be obviated by use of only part of the land for mental health purposes. The deed will require study and construction as to its intent. However, we see no objection to the City advising the State Administrator of Property of its interest in said parcel.

CONVEYANCE OF PROPERTY TO A MUNICIPALITY

*(Chairman, Department of Planning, City and Community
Development—H. A. T.—July 13, 1979)*

In a letter to this office dated June 28, 1979 you advise that on May 23, 1979 the City Council vacated a portion of Damen Avenue in which the east half reverted to the Medical Center Commission and the west half reverted to the City of Chicago. Your staff has requested that the west one-half of said part of Damen Avenue that reverted to the City be conveyed by the City to the Medical Center Commission, and you ask our advice as to the procedures entailed to implement said conveyance.

Chapter 91, Section 127 of Illinois Revised Statutes provided for the creation by the State of Illinois of a body politic, as an agency of the State of Illinois, designated as the Medical Center Commission.

Chapter 30, Section 156 of Illinois Revised Statutes provides for the conveyance of lands between municipalities. In my opinion the Medical Center Commission comes within the definition of "Municipal Bodies," as set forth in said Section 156.

Chapter 24, Section 11:76-2, and following, of the Illinois Revised Statutes sets out general procedures necessary for a City to follow in the sale of land. However, we believe Chapter 30, Section 156, is not conflicting but is supplementary to the general sales procedures.

Section 157 of said Act requires the transferee municipal body to adopt an ordinance (resolution) indicating it is necessary or convenient to it to acquire the property.

Section 157(a) states the transferor municipality may convey upon such terms and conditions as may be agreed upon. Authorization by a two-thirds' vote of the City Council is required.

We note the vacation ordinance adopted May 23, 1979 reserves an easement for the Illinois Bell Telephone Company and the City electrical facilities. Any proposed conveyance should reserve any easements required by the City for the use of its facilities. Further investigation should be made as to whether any City Agency is using said land prior to negotiating with the Medical Center Commission.

NORTH PARK VILLAGE—
MULTIDENOMINATIONAL CHAPEL USE

*(Commissioner, Department of Planning, City and Community
Development—F. H. K.—July 25, 1979)*

We are in receipt of your letter of March 8, 1979, and supplemental material dated June 4, 1979, with reference to use of the chapel on the property formerly occupied by the Municipal Tuberculosis Sanitarium, (hereinafter referred to as M.T.S.), and now by North Park Village.

The ordinance passed by the City Council on October 23, 1935, recites the resolution of the Board of Directors of the M.T.S. of October 14, 1935, that it accepts the offer of Frank J. Lewis to erect a chapel where religious services may be celebrated and performed according to the rules and customs of the Roman Catholic Church upon the grounds of the M.T.S., the title to vest in the City of Chicago.

You state that the development program for North Park Village calls for the use of the facility for regular multidenominational religious services on a limited basis and that it also be used for special services such as weddings as well as small musical performances.

The fact that M.T.S. would no longer be in existence was not known by Mr. Lewis and was not anticipated by him. This should not be permitted to defeat the purpose of the gift.

The wording "where religious services may be celebrated and performed according to the rules and customs of the Roman Catholic Church" indicates an intention that the chapel be designed for Roman Catholic services but there is no indication of an intention that it must be used exclusively for this purpose.

It is our opinion that this building must be maintained in such a condition that services may be celebrated and performed according to existing custom of the Roman Catholic Church, but that it may be used at other times by other denominations as well as small musical recitals and similar aesthetic uses.

LEASING OF NAVY PIER
AUDITORIUM

*(Commissioner, Department of Public Works—
R. L. H.—December 6, 1979)*

We have, at your request, reviewed the comments made by Allis-Chalmers regarding both the proposed lease agreement and the Economic Disclosure Statement.

Insofar as the Economic Disclosure Statement is concerned, we require that the relevant paragraphs be filled in and the Annual Report can be attached to indicate the identities of the Officers and Directors.

Insofar as the other comments are concerned, we do not deem it necessary to answer each and every objection raised. Sufficient to say, if Allis-Chalmers is interested in leasing the Auditorium for a one night dinner party, they will do so on our terms without modification.

We suggest, therefore, that Allis-Chalmers be advised that if they are sincerely interested in the Auditorium for their dinner party, they fill out the Economic Disclosure Statement, attach a copy of their Annual Report to it, execute the requisite copies of the lease, and return all to you for further execution.

CITY ACQUISITION OF SHERMAN HOUSE HOTEL

*(Commissioner, Department of Urban Renewal—
R. F. F.—December 18, 1979)*

This is to inform you of our opinion that the Sherman House Hotel is owned by the City of Chicago, and that the City of Chicago is authorized to exercise control of the premises. No other person retains any interest in or has any right in the property.

The hotel and its ancillary properties were acquired by the City of Chicago by reason of an eminent domain suit, filed February 15, 1979, entitled *City of Chicago v. Gorham*, Circuit Court of Cook County, No. 79 L 3188. All necessary persons were made or have become parties to the suit.

A judgment in that case was entered October 17, 1979, determining the fair cash market value of the property.

Pursuant to that judgment, the City of Chicago deposited the award plus costs with the Treasurer of Cook County on November 7, 1979. From that date forward, by reason of the Deposit of the condemnation award, the City of Chicago became vested with the fee simple title of the property, free of all prior interests.

Sub-lessees who rent stores on the ground floor of the hotel appealed to the Illinois Appellate Court seeking a review of the trial court's determination that the City of Chicago had authority to acquire the property. During the appeal, the City has the right to retain possession of the property, pursuant to an order entered on November 21, 1979, granting the City right of possession of the property.

The order of possession was conditioned on the City's deposit of a bond in the amount of \$200,000. Such bond was approved and deposited December 14, 1979.

By reason of the deposit of the amount of the judgment, the order of possession and the deposit of the bond, the City of Chicago is the owner of the Sherman House property. Consequently the City of Chicago has the obligations and rights of ownership, including all of the rights of management of the property. In addition, it should be noted that no other person is entitled to manage, collect rents or have any other interest of any kind in the property.

Section B. WATERWORKS AND SEWERS

LIABILITY FOR UNPAID CHARGES—EFFECT OF TRANSFER OF PROPERTY

*(Acting Commissioner of Water & Sewers—
S. B. R.—February 4, 1974)*

Pursuant to our discussion on January 30, 1974 please be advised that the premises located at 9412 S. Indiana, Chicago, Illinois is owned by Mr. and Mrs. Melvin Richards. The Richards acquired title to the property on November 2, 1973 by Warranty Deed. The previous owners were Percy Hall and wife.

According to the Real Estate Contract, the owners, Mr. and Mrs. Richards, were to receive the property free and clear of all encumbrances and liens. A check by the previous owner was submitted to the Water Department in the amount of \$119.95. However, there were non-sufficient funds to cover this amount. At the time of the closing of the deal, the Halls submitted a water bill marked paid. Mrs. Richards, the present owner, paid the existing water bill to our shut off man in order to prevent the water from being shut off.

As you are aware when there is a change of ownership the former owner is responsible for water bills up to the date of transferring the title of the Real Estate. It is, therefore, the opinion of the Corporation Counsel that Mr. and Mrs. Richards be refunded the amount paid.

Please place the amount owing by the previous owner, Percy Hall, in Suspense and supply us with the necessary information so that we can process collection. At the time of the refund, obtain the non-sufficient check and the address of Mr. and Mrs. Percy Hall.

SURCHARGE ON WATER RATES

*(Acting Commissioner of Water and Sewers—
W. M. Z.—February 5, 1974)*

Please refer to your communication of December 20, 1973 wherein you state as follows:

"A legal question has been raised by the attorney for the Justice-Willow Springs Water Commission concerning application of the City of Chicago's 50% surcharge on water rates. Attached, for your review, is a copy of this letter.

"We would appreciate your advice and counsel on this question."

It is our opinion that at this time the matter is governed by a Council Ordinance, which among other things, provides as follows:

"Said water supply to be north of the north line of W. 65th Street, said water supply to be furnished to the FOREST PRESERVE DISTRICT OF COOK COUNTY to be used by the Camp Kiwanis of the Boy Scouts of America located in an unincorporated area of Palos Township, S. of 87th Street and adjacent to the south corporate limits of the COMMISSION, in accordance with the terms of the water supply contract No.

24390 dated August 23, 1963; the JUSTICE-WILLOW SPRINGS WATER COMMISSION shall pay to the CITY OF CHICAGO for water furnished to the FOREST PRESERVE DISTRICT OF COOK COUNTY to be used by the Camp Kiwanis of the Boy Scouts of America at the rate of fifty per cent (50%) higher than the metered rate per thousand cubic feet fixed from time to time by ordinance and charged consumers within the CITY OF CHICAGO, provided, however, that said service shall terminate if and when Palos Township constructs water facilities in the vicinity and is ready to furnish water to the above described premises."

The Council is the only body that can change the charges imposed in the above ordinance.

WATER SERVICE TO ANNEXED AREA

*(Acting Commissioner—Department of Water and Sewers
—M. J. F.—March 19, 1974)*

Please refer to your correspondence of March 12, 1974, wherein you request an opinion as to the requirement of the City of Chicago to extend water service to the All Saints Cemetery on Higgins Road, west of East River Road.

Our investigation discloses that said property is within the corporate limits of the City of Chicago and is entitled to water service from the City's Water Supply and Distribution System.

Upon proper application, the Commissioner of Water and Sewers may exempt the cemetery property from the payment of water rates.

The cemetery is not exempt from any other provision of the Municipal Code concerning water service.

OWNERSHIP OF CENTRAL WATER FILTRATION PLANT

*(Acting Commissioner, Department of Water & Sewers
—J. R. P.—April 3, 1974)*

By letter dated June 6, 1973, you requested an opinion with respect to the ownership of the Central Water Filtration Plant property.

Please be advised that on November 29, 1949, the City Council of the City of Chicago, having previously had public hearing thereon, passed an Ordinance approving the location of the Central Water Filtration Plant, as follows:

A north-south width of 1100 feet and an east-west length of 2300 feet; the south boundary to be a line 400 feet north of Navy Pier; the west boundary to be 500 feet on the south to 1,500 feet on the north from the lakeshore bulkhead, and the north boundary to be on the approximate line of Superior Street extended eastward.

On January 10, 1950, the Chicago Park District passed a Resolution approving the location of the site and the character of building to be erected thereon.

Reclamation of the land and construction of the water filtration plant was begun on May 9, 1952 and completed on October 29, 1964. Submerged land

under public waters was reclaimed for the purpose of constructing the water filtration plant on the following legally described premises:

A part of the tract of land reclaimed from Lake Michigan for the Central Filtration Plant in the City of Chicago; which part of said tract lies east of the lands, and accretions thereto, in Kinzie's addition to Chicago, being a Subdivision of the North fraction of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, and is located and described as follows:

Commencing at the southeast corner of Lot 44 in Circuit Court Partition of the Ogden Estate subdivision of parts of Blocks 20, 31 and 32 in Kinzie's Addition to Chicago, in the North half of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian; said Southeast corner of Lot 44 being also the point of intersection of the West line of North Lake Shore Drive as said West line is shown on the plat of survey filed with a deed to the Commissioners of Lincoln Park, recorded in the Recorders office of Cook County, Illinois on the 27th day of July, 1929, as Document No. 10439522, with the North line of East Grand Avenue as said north line is monumented and occupied in Circuit Court Partition aforesaid, and running;

thence South 89 degrees 59 minutes 49 seconds East (S.89°-59'-49" E.) along the North line of said East Grand Avenue extended East a distance of 595.35 feet to an intersection with the Southwestward extension of the Northwesternly face of a concrete curb on the dike-type cofferdam along the Westerly side of said reclaimed tract of land;

Thence North 26 degrees 32 minutes 44 seconds East (N.26°-32'-44" E.) along said Southwestward extension and along the Northwesternly face of said concrete curb a distance of 437.20 feet to an intersection with the Westward extension of the South face of the concrete dock along the South side of said reclaimed tract of land, said point of intersection being the point of beginning for said hereinafter described part of said reclaimed land;

thence continuing North 26 degrees 32 minutes 44 seconds East (N.26°-32'-44" E.) along the Northwesternly face of said concrete curb a distance of 15.00 feet to an intersection with the Eastward extension of the North face of a concrete dock;

thence South 89 degrees 54 minutes 04 seconds West (S.89°-54'-04" W) along said Eastward extension, and along the North face of said concrete dock, a distance of 25.73 feet;

thence North 26 degrees 32 minutes 44 seconds East (N.26°-32'-44" E.) along a line formed by the intersection of a horizontal plane which is at elevation 00.00 feet Chicago City Datum with the upper stone surface of the lake side portion of said dike type cofferdam along the Westerly side of said reclaimed land, a distance of 1260.31 feet to an intersection with a similar line formed by the intersection of said horizontal plane with the upper stone surface of the lake side portion of the dike type cofferdam along the North side of said reclaimed land;

thence "East" along said last described line a distance of 546.19 feet;

thence "South" a distance of 17.55 feet;

thence "East" along a line which at 628.09 feet passes through the Northeast corner of a concrete slab or platform overhanging the waters of the lake, a total distance of 1070.50 feet;

thence "North" a distance of 13.00 feet to an intersection with a line formed by the intersection of said horizontal plane at elevation 00.00 feet Chicago City Datum with the upper stone surface of the lake side portion of the dike type cofferdam along the North side of said reclaimed land;

thence "East" along said last described line of distance of 516.28 feet to an intersection with a similar line formed by the intersection of said horizontal plane with the upper stone surface of the lake side portion of the dike type cofferdam along the East side of said reclaimed land;

thence "South" along said last described line a distance of 876.20 feet;

thence "West" a distance of 9.55 feet to the northeast corner of a concrete dock along the East side of said reclaimed land;

thence "South" along the East face of said concrete dock a distance of 242.75 feet to an angle in said dock;

thence South 44 degrees 30 minutes 17 seconds West (S 44°-30'-17" W) along the Southeasterly face of said concrete dock a distance of 24.17 feet to an intersection with the South face of the concrete dock along the South line of said reclaimed land; and

thence "West" along the South face, and along a Westward extension of the South face of said concrete dock, a distance of 2650.69 feet to the point of beginning.

It is our opinion that the City of Chicago, a municipal corporation, is the absolute owner in fee simple of the premises above described, having reclaimed the same according to the laws of the State of Illinois. (Illinois Revised Statutes, 1949-1961, Chapter 24, Section 49-11.)

CANCELLATION OF EXEMPTION FOR WATER SERVICE FEES

*(Acting Commissioner, Department of Water and Sewers
—W. M. Z.—July 28, 1975)*

Please refer to your communication of July 21, 1975 which, in part, reads as follows:

"Halfway House rents 29 rooms at \$2.42 per day or \$72.60 per month per room for 29 rooms which totals \$2,105.40 per month. Although these rooms have no private plumbing facilities and the occupants use shared washrooms, the water service to the building is metered. Rent is paid by the Department of Correction, State of Illinois.

"An opinion is requested as to whether we may cancel the exemption for the above listed accounts and place them back into revenue accounts in accordance with Section 185-47 of the Municipal Code."

It is our opinion that we should immediately cancel the exemption for the above listed account. May we call your attention to that portion of Section 185-47 which is as follows:

(d) ". . . Nothing contained in this paragraph shall be held to exempt property of the United States, of the state of Illinois, or of any of its political subdivisions except as hereinbefore mentioned."

We further call your attention to the fact that the Duncan Y.M.C.A. is the landlord collecting the rents and is not operating the property for the carrying out of the purpose of any charitable, religious or educational institution as set forth in the Municipal Code under the same Section 185-47 (a).

CHURCH EXEMPTION FROM WATER CHARGE PAYMENT

*(Commissioner, Department of Water and Sewers—
—W. M. Z.—May 12, 1976)*

Please refer to your communication of May 12, 1976, which in part, reads as follows:

“Please be advised that the records of the Water Collection Division indicate that the premises listed above was used as a Church and met the requirements for exemption of water rates. No private meter was installed in 1960.

“The premise was sold October 18, 1971 and the account was returned to revenue as of that date.

“The new owner of the building, The New Apostolic Church, has made application for exemption, supplied us with a copy of the Deed and a Non-Profit Charter which states that the property will be used as a Church.

“Our records indicate that \$1,478.66 is due against this account.”

We have investigated this matter thoroughly and it is our opinion that the said sum of \$1,478.66 be deleted.

The New Apostolic Church is a non-profit organization and is exempt from payment of water charges.

CHURCH EXEMPTION FROM PAYMENT OF WATER RATES

*(Commissioner, Department of Water and Sewers—
W. M. Z.—February 3, 1977)*

Please refer to your communication of January 19, 1977 with reference to water rates for the property at 5017-25 S. Greenwood Avenue. Your correspondence, in part, reads as follows:

“The new owner of the building, The Catholic Bishop of Chicago has made application for exemption, supplied us with a copy of the Deed and a Non-Profit Charter which states that the property will be used by the Focolare Movement for religious education and training.”

We have investigated this matter and it is our opinion that the property should be exempt from payment of water rates. Kindly, therefore, place in Suspense Account the amount charged against the property.

UNCOLLECTIBLE WATER SUSPENSE
ACCOUNTS

*(Commissioner, Department of Water and Sewers—
W. M. Z.—December 5, 1978)*

In your letter of November 24, 1978, you quoted the provisions of Section 8.1-11 of the Municipal Code with reference to Water Suspense Accounts No. 1 and No. 2, and you requested our opinion as to how to proceed with the disposal of these delinquent charges.

An examination of the records kept by your department, and the records of your accounts forwarded to our department for collection indicated that every effort has been made to collect the Water Suspense Accounts for the year 1973 which amount to a grand total of \$278,491.58.

We believe that these accounts are uncollectible and under the modern methods of accounting should no longer be carried on your records as a valuable asset.

You, no doubt, are aware that the Statute of Limitations on open accounts is five years. Therefore, it is our opinion that these Accounts No. 1 and No. 2 for the year 1973, are uncollectible and should be stricken from your records.

Section C. TAXATION OF CITY
PROPERTY

SPECIAL ASSESSMENTS INSTALLMENTS

*(Director of Real Estate—W. M. Z.—
July 7, 1975)*

Please refer to your communication of July 15, 1975 which, in part, reads as follows:

"The Director of the Department of Revenue, has asked us to obtain a legal opinion from the Corporation Counsel, as to whether we have the right to administratively mark certain Special Assessment Installment Records in the Collector's office as "Satisfied, City-owned Property," under the following conditions:

1. Where the City has acquired title to property.
2. Where the Special Assessment Installment has been returned to the City Collector's office and is over 30 years old.
3. Where all the Bonds have been retired and the Assessment is still collected by the City to satisfy the lien of record.
4. Where there has been a merger of the Fee Simple Title and the lien of the Special Assessment Installment."

"

"When these encumbrances are Certificates of Sale or Forfeiture, or withdrawn items, all of which are held by our office, we merely check to see if there are any Bonds outstanding, and, if not, we cancel and clear our rec-

ords with a "no money receipt" and submit the cancellations to the Cook County Clerk to clear his Judgment Records. . . .

"

"Now, we ask if we may have your opinion as to the propriety of cancelling the Special Assessment Installments that show URD on the Collector's records, by communication addressed to the Director of Revenue from the Comptroller of the City of Chicago."

It is our opinion that the Comptroller is authorized to cancel the Special Assessments by a written communication to the Director of Revenue, as set forth in your letter quoted above. However, it is imperative that our records be stamped with the following notation: "SATISFIED—CITY-OWNED PROPERTY—NO BONDS OUTSTANDING" and bearing the initials of the party making the notations.

CHAPTER XII—CONTRACTS

Section A. BIDS AND AWARDS

EQUAL OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENTS

*(Commissioner, Department of Aviation—
R. L. H.—July 30, 1973)*

Your recent letter in the above entitled matter requests our views and any suggestions we could have on steps your Department should take to insure compliance with the Equal Opportunity Affirmative Action Requirements attached thereto and referred to in the letter to you from Mr. Kittrick of the F.A.A., also attached thereto.

Our review of Mr. Kittrick's letter indicates quite clearly that in all future invitation for bids for ADAP projects and in all current ADAP projects that are out for bid and the bid opening date has not yet occurred it will be necessary to include in the bid document package the pages entitled Bid Conditions, Affirmative Action Requirements, Equal Employment Opportunity and to require the Bidders to execute the Certifications contained therein.

We would only suggest that you advise the Department of Public Works and the Purchasing Agent that these Bid Conditions must be included in the Contract Documents and it would then be their function to see that this is done and that the Bidders comply with the terms thereof.

If we can be of any further assistance to you in this matter, please advise.

REQUEST TO INCREASE PRICE DUE TO RISING COSTS

*(Acting Purchasing Agent—R. L. H.—
January 7, 1974)*

Your letters of November 13, 1973, December 5, 1973, and December 5, respectively in the above cited matters accompanied by attachments in each instance forward to us to for our opinion requests from each of the vendors affected for increases in the above cited annual contracts. The requests were, in all instances, supported by evidence of increases of cost to each of said vendors.

Rather than replying to each of the aforementioned letters individually, we will review generally the basic situation raised in all three and render an opinion which will serve as a general opinion on any request to increase prices on an annual contract during the term of said contract.

When bids are invited for annual contracts it is the understanding of all parties, bidders and the City, that the prices bid are to be firm for the term of the contract and that the lowest responsible bidder who received the award of contract is bound to deliver the goods or services bid upon for the prices bid for the duration of the term of the contract. Since there are no provisions for upward escalation of prices during the contract term, any such escalation after award of contract is illegal on the basis (among others) that it defeats the legal requirements of open competitive bidding.

It is unfortunate that contractors on annual contracts are currently suffering increases in costs which may cause, in some instances, said contractors to perform their annual contracts at a loss rather than a profit. It is assumed, however, that when a prospective bidder prepares his bid on an annual contract, he takes into consideration possible increases in costs to him during the term of the contract and reflects these possible increases in the prices bid. Very possibly, in these instances, the cost increases to the contractors could not have been contemplated and, if so, it is truly unfortunate.

The law is quite clear however, and it is our opinion, therefore, that the requests for increases in prices bid on annual contracts must be denied.

If we can be of any further service to you in these matters, please advise.

MODIFICATION AFTER AWARD—BEST INTERESTS OF THE CITY

*(Acting Purchasing Agent—R. L. H.—
February 7, 1974)*

Your letter of January 25, 1974, forwards for our review a letter dated January 23, 1974, from the Acting Commissioner of Public Works to which is attached a letter from Michael McDermott & Company, the low bidder on the above cited specifications, requesting an additional sum of \$20,000 as a condition to their accepting the award of the above cited contract.

The bids on this specification were opened on July 24, 1973, and formal award made on November 28, 1973, pursuant to your letter to us. The contractor, in addition, sets forth that he received a copy of the contract indicating its award to him on December 21, 1973, almost a month later. In any event, award was not made until 127 days after bid opening at the earliest.

The contract documents provide that all bids must be firm for sixty days after bid opening or for 90 days after bid opening if another agency must approve the award. Here, the U.S. Corps of Engineers' approval was required so the 90 day provision applies. The Contract documents also provide that an award will be made within 90 days where another approval is necessary and unless requested to extend this time for award by the Purchasing Agent, upon the lapse of said time period, the bidder may choose not to be bound thereto and may reject the award. In the instant case, there was no such request.

The contractor, McDermott, has determined that there has been a marked change in the economy during the time between bid opening and award which would cause an increase in his costs for performance. He has properly exercised his rights under the Contract language and has refused to accept the award of the contract under the same terms as bid. He states, however, that he will perform the aforesaid contract if an additional \$20,000 can be added to the contract price.

Your letter also advises us that the spread between McDermott's low bid and the next bidder is just under \$40,000. If an additional \$20,000 were given to McDermott, the total would still be less than the next lowest bid.

Ordinarily, proper procedure at this juncture would be to reject all bids due to lapse of time and readvertise the specification. Knowing, however, that the state of the economy has not bettered and is, in fact, getting worse, it is an almost certainty that the prices that would be obtained on a re-bid would greatly exceed the price bid by McDermott even with the additional sum requested included.

It is our further understanding that:

1. Rejection and readvertisement and re-approval by the Corps of Engineers would most likely cause a contract to be awarded in fall 1974.
2. Costs, both labor and material, are continually escalating and could cause a great increase in the cost of this work unless said work is commenced as soon as possible.
3. The delay in award was occasioned by delays by the U.S. Corps of Engineers in approving the contract.
4. The U.S. Corps of Engineers has indicated that they will pay the additional \$20,000 requested by the contractor.

Upon review of all of the foregoing, it is our opinion that the best interests of the City would only be served by commencement of this project as soon as possible. To that end, it would also be to the best interests of the City to grant McDermott up to, but not in excess of the additional monies requested by him so he will accept the award of the contract and proceed immediately with the work at hand.

To give effect to the foregoing, we suggest that a contract modification be processed in a sum not to exceed \$20,000 with payment thereunder to be based upon evidence of increased costs to the contractor over and above the prices upon which his bid was based. When the contractor is advised of the processing of this modification, he can, at the same time, be given the starting date for his performance of the work under the said contract.

Since the Acting Commissioner of Public Works also directed his letter of January 23, 1974, to our office, a copy of this opinion is being forwarded to him in reply to that request.

We would also suggest, for future reference, that whenever it appears that the allocated time between bid opening and award is running out, a timely request be made to the low bidder, in writing, to extend the time for award.

If we can be of any further service to you in this matter, please advise.

CHANGES AFTER AWARD DUE TO DELAY BY CITY

*(Acting Purchasing Agent—R. L. H.—
February 15, 1974)*

Your letter of February 6, 1974, requests our opinion as to whether you may grant an increase not in excess of \$22,873.00 to Divane Bros. Electric Company due to the escalation of costs to him during the one year delay between bid opening and award. We understand that Divane, in the proper exercise of his rights, has refused to accept award of the contract at this late date unless the aforesaid increase is approved.

Attached to your letter are two letters from Divane and a letter from the Solar Division of International Harvester, the manufacturer of the generator to be used in this project. Solar advises Divane that although the cost of the required generator has increased almost 50% since the price was quoted prior to bidding (an increase of almost \$50,000), the only increase that will be charged to Divane is approximately 8.4% or some \$8,825.00 since Divane ordered the generator prior to the price increases.

Divane's letters indicate that although many of the other items of material have escalated during this year's delay, they would be able to absorb these increases if the City would cover the almost tripling of the cost of the Shielded Cable due to the tremendous increase in the price of copper and the aforesaid increase in the cost of the generator.

We were quite disturbed that it took over a year from the date of bid opening to the date of award since the contract provides for either 60 or 90 days as a maximum time that can elapse. We have determined that since the Air-line Top Committee must approve of all projects to be paid for out of O'Hare Revenues, they were required to approve this project. Although the Department of Public Works requested their approval many months ago, said approval was not forthcoming until late December, 1973.

We have reviewed the tabulation of bids and find that another bidder was approximately eight thousand dollars higher than Divane. Authorizing an increase to Divane, as requested, would cause their price to be higher than the next bidder, a situation which cannot be approved.

As we indicated in a prior letter where a similar request for additional compensation was approved, proper procedures would require a re-advertisement of the specification. However, in view of the current economic state, a re-advertisement of bids would certainly bring in a lowest bid greatly in excess of Divane's bid plus the additional compensation requested such that the best interests of the City would require approval of Divane's request and allow him to proceed with the work.

In order to clarify the record, however, we deem it necessary for you to determine whether or not the second lowest bidder would accept award of the contract at this time for the amount bid by him. A letter should be sent to him requesting whether or not his prices were still firm in the event the contract were to be awarded to him and further requesting a reply by return mail. In the event he would accept award at his bid price, Divane should then be contacted to determine whether or not he will perform at the price bid by him. If not, a contract may be properly awarded to the next low bidder and Divane's contract cancelled.

In the event the next bidder states that he will not accept award at the price bid by him, a change order for a sum not to exceed \$22,873, should be prepared for Divane and he be advised to proceed with the work.

It is therefore our opinion that in the event the second lowest bidder will not accept award of the contract for the price bid by him, the best interests of the City would be served by award to Divane Bros., the lowest bidder, with a change order for the additional costs due to delay in award as set forth above being processed in his behalf.

If we can be of any further service to you in this matter, please advise.

FIRE INSURANCE ON VOTING MACHINES

*(Chairman, Board of Election Commissioners—
R. L. C.—February 8, 1974)*

Your letter of January 7, 1974 informs us that voting machines valued at approximately \$10 million are stored in public warehouses without insurance coverage other than the customary minimum warehouse coverage afforded by the warehouse.

You further inform that an "all risk" insurance policy is obtainable which would provide total loss coverage for an annual premium in the neighborhood of \$30,000. You ask our opinion whether or not the Board should purchase fire insurance coverage for its machines or continue to assume the risk as a self-insured.

The decision which the Board must make in this matter is based more in sound business management than in law. Voting machines have been purchased periodically in relatively small numbers over a great number of years, so that today the Board owns an impressive number of these machines, the total value of which, as you state, is approximately \$10 million. In the absence of insurance proceeds, the replacement of any significant portion of machines lost by fire would necessarily have to await specific appropriation by the City Council and/or the issuance and sale of General Obligation Bonds. In either event, the delay in securing the funds, when added to the delays attendant with the order, manufacture and delivery of replacement equipment, would be protected. It would appear to be both in the public interest and a matter of sound business judgment for the Board to take steps to insure this valuable public asset against losses which could not otherwise readily be offset.

The decision, of course, is one of policy rather than law, and one for which, apparently, no precedent exists. If, however, a decision is made by the Board to secure insurance coverage for voting machines, caution should be exercised in testing the market so that the fullest coverage may be obtained for the smallest premium.

CANCELLATION WITHOUT PENALTY

*(Acting Purchasing Agent—R. L. H.—
September 3, 1974)*

In response to your letter of August 12, 1974, in the above entitled matter wherein you refer to a request from the contractor to cancel the contract without penalty, please be advised that we have reviewed the contractor's letter of request, the contract and the time frames pertinent and related thereto.

It appears that the bid opening was on April 6, 1973, and, since approval of other agencies were required, award of the contract was not required until 90 days thereafter or July 5, 1973. Although award was made by the Acting Purchasing Agent on June 7, 1973, well within this 90 day period, a formal contract was not entered into until August 6, 1973, the date it was executed by the Mayor. The contractor had no specific advice that he was awarded the contract until October 4, 1973, when an executed copy of the contract was sent to the contractor.

It can be said that the contractor must have or should have known that he had been awarded the contract when he was requested to supply a Performance Bond and then received a refund of his bid deposit in July, also well within the 90 day period. He did not, however, receive formal notice of the award until October, said formal notice being important and pertinent.

Notice to proceed followed formal notice of award quickly and the contractor had ample opportunity to refuse the contract at both of these junctures and chose not to refuse.

The contractor further states that performance was delayed by the City to Spring 1974, and, at the time of his letter on July 30, 1974, he indicates that utilities and water pipes are still present such that it is still impossible for him to commence performance.

Although we do not believe that the provision of the State Specifications quoted by the contractor has any effect in this matter and have the opinion that even if it did, the contractor's failure to exercise that provision as well as his failure to reject the contract when formally notified of award until the 30th of July 1974, serves as a waiver of all such provisions and the contractor could legally be forced to perform the contract as bid.

The fact that the sites are still not completely available and the further fact that economic conditions now are such that it would be unconscionable to force the contractor to perform in late 1974 at early 1973 prices leads us to a decision that the contractor should be relieved of his obligations under the contract. It may further be said that approval for the award of contract from both the State and Federal agencies involved was in hand in June 1973 prior to the award by the Purchasing Agent. The delay of the State's Regional Office in making formal approval upon receipt of fully executed contracts is of no consequences since formal advice of award and notice to proceed could have been forwarded to the contractor concurrently with the submission of the executed contracts to the State's Regional Office.

It is therefore our opinion that you may properly cancel this contract without penalty and return the cancelled performance bond to the contractor.

We suggest that internal procedures be tightened up in the future to prevent occurrences of this nature again.

REMOVAL OF DEAD ANIMALS

*(Acting Purchasing Agent—R. L. H.—
March 5, 1975)*

Your letter of January 10, 1975, in the above entitled matter requests our opinion as to whether a contract can be legally awarded to the low bidder who indicates that the rendering of the animals will occur at a plant in Plymouth, Indiana.

Discussions were had with the State of Illinois Department of Agriculture regarding the transportation of the animals across state lines due to statutory prohibition thereof. The Agriculture Department indicated that since the States of Illinois and Indiana do have an agreement authorizing such transportation across state lines, they would not object to the award of such a contract so long as the vehicles utilized were approved by them and the rendering plant in Indiana was duly licensed by the State of Indiana.

We are faced, however, with the provisions of Section 98-8 of the Municipal Code of Chicago, which requires the rendering plant to be located within the boundaries of the City of Chicago, and therefore, unless such provisions were repealed, rendering of animals in Indiana would not be permitted.

It is therefore our opinion, based on the currently existing ordinances of the City of Chicago that a contract cannot be legally awarded to the aforesaid low bidder. In addition, since the specifications specifically referred to "all work or removal shall be conducted in accordance with Section 98-8 of the Municipal Code of Chicago," the bid of this low bidder is non-responsive to the specifications and must be rejected on that basis.

Further, since it appears that this specification will not be advertised in the future, it being the City's intention to provide this service with City forces, we would suggest that the contract be awarded to the next bidder, the only bidder fully meeting the specifications.

EFFECT OF CLARIFICATION OF NON-RESPONSIVE BID

(Purchasing Agent—R. L. H.—January 29, 1976)

Your letter of December 22, 1975, in the above-entitled matter, addressed to the Corporation Counsel, has been referred to the undersigned for review and reply.

The specification and bidding documents contain a section entitled "Bid Evaluation" on pages S.C. 2 and 3 wherein it is clearly stated at S.C. page 3 as follows:

"Bids will be evaluated on the basis of CBTU's divided by a Pollution Index Factor, with the higher number resulting from this calculation considered the most favorable on the basis of lowest cost and least air pollution. The Pollution Index Factor shall be computed by taking the sulfur content of dry coal, expressed as a per cent, multiplied by the pounds of particulate matter per 1,000,000 BTU of coal combustion as determined by the attached nomograph. The Stoker shall be considered as Class B in use of the nomograph.

Both Proposal "A" on Proposal page 2 and Proposal "B" on Proposal page 3 for the Roseland and Central Park Pumping Stations respectively provide a line upon which the prospective bidder is to insert a per cent figure for the guaranteed sulfur content of the coal intended to be supplied, along with other figures for other characteristics of the said coal.

Knowing full well both from reading these specifications and contract documents and from having bid and been awarded contracts for this commodity in the past that a specific figure for per cent sulfur was required to be inserted in the line provided to enable the Purchasing Agent to evaluate bids pursuant to the aforesaid "Bid Evaluation" paragraph, O'Keefe Bros. Coal Company chose to ignore this requirement and merely inserted "under 1%" on this line.

Since it was impossible to properly evaluate the bid of O'Keefe Bros. Coal Company due to the unavailability of a specific per cent for sulfur content, the bid of O'Keefe could legally have been disregarded as being not responsive to the invitation to bid and rejected.

Although there was no duty to do so, a full review of O'Keefe's shipments in the immediate past year was made and all of the pertinent data required for bid evaluation was averaged from the testing reports on each of said shipments. Two bid evaluations were made for O'Keefe as a result of such analysis; one utilizing all of the averaged data, including the sulfur content percentage; and the second utilizing only the average sulfur content data, together with the other pertinent data submitted by O'Keefe within their bid. The first evaluation resulted in an evaluation figure which was extremely low as compared with the other bids. The second evaluation resulted in an evaluation figure slightly below that of Lake Shore International, Ltd., whose evaluation figure was the highest of all bidders.

O'Keefe Bros. Coal Company submitted a letter over a month after bid opening guaranteeing a sulfur content percentage which would have made an evaluation figure calculated therefrom the highest figure and, therefore, O'Keefe would be entitled to the contract award. Had O'Keefe indicated a sulfur content of .60% on the line provided with their bid, there would have been no controversy. However, the failure to do so and the submission of this figure

at a time after bid opening when it could have been easily determined that this figure would guarantee award to it clearly appears to be an attempt by O'Keefe to submit a second bid after bid opening which is illegal and unacceptable.

Our review of all bids submitted on this specification, including analysis and calculations of the CBTU value, the Pollution Index Factor and the Bid Evaluation Figure results in the conclusion that the responsive bid of Lake Shore International, Ltd., is the lowest responsible bid pursuant to the Bid Evaluation Criteria, the coal proposed giving the most heat per dollar cost with the least possible air pollution resulting from its use.

It is, therefore, our opinion that a contract may be awarded to Lake Shore International, Ltd., based on the bid of October 15, 1975, if said bidder agrees to accept such award at this late date, the sixty days provided for in paragraph 9 of the Requirements for Bidding and Instructions to Bidders having expired on December 14, 1975.

REJECTION OF BID DUE TO CONTRACTOR'S PAST PERFORMANCE

(Purchasing Agent—D. P.—March 22, 1978)

Your recent letter requests an opinion regarding the award of contracts to the City Construction Company. The Illinois Municipal Code of 1961 provides as follows:

Any and all bids received in response to an advertisement may be rejected by the purchasing agent if the bidder is not deemed responsible, or the character or quality of the service, supplies, materials, equipment or labor does not conform to requirements or if the public interest may be served thereby. [Ill. Rev. Stat. 1975, ch. 8, § 8-10-12.]

Additionally, the Mayor of Chicago introduced an ordinance amending

Chapter 26 of the Municipal Code of Chicago on March 8, 1978, which was referred to the Finance Committee and which provides in part:

No person or business entity shall be awarded a contract or subcontract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any other public entity, in that officer's or employee's official capacity; or (b) has made an admission of guilt of such conduct which is a matter of record but has not been prosecuted for such conduct. Ineligibility under this section shall continue for three years following such conviction or admission.

In view of the above statute, the proposed ordinance by the Mayor, and the disclosure of the principals of City Construction Company and their relationship to the principals of the Brighton Building & Maintenance Company, it is the opinion of this office that the Purchasing Agent may reasonably determine, if evidence warrants, that the relationship between the companies is such that it may be considered a subterfuge, and that the public interest would be best served by rejecting the bid and accepting the next eligible bid.

Furthermore, even apart from the question of subterfuge, as Purchasing Agent you would have to determine if the bidder was "responsible" based on its past performance. It is our understanding that the bidder is a new corporation and does not have a history of past performance; accordingly, you,

as Purchasing Agent, could reasonably find that City Construction Company was not a responsible bidder within the meaning of the Illinois Municipal Code.

Thus, should you conclude that either of the above situations is true, you would be authorized to reject the bid of City Construction Company.

CHANGES TO LOWEST PRICE BID AFTER BID OPENING

(Purchasing Agent—R. L. H.—April 25, 1978)

Your letter of March 23, 1978 requests our opinion as to whether or not any or all of three reasons cited therein as raised by the second bidder constitute irregularities of sufficient magnitude as to warrant rejection of the low bid.

1) All Brake did not specifically acknowledge receipt of Addendum in the place provided, although they confirmed by letter they had received it and would meet its requirements.

So long as the bidder did in fact receive the addendum and has agreed to meet its requirements, said requirements not affecting price, the defect of not acknowledging receipt of the addendum on the contract documents is a minor defect which can be waived.

2) All Brake took exceptions to standard Special Conditions requirement to accept trade-ins without regard for deterioration after appraisal, but rescinded this exception by letter.

Negotiation with the low bidder to *reduce* the price bid has always been held acceptable. Negotiation with the low bidder to remove exceptions to the contract terms and conditions is also acceptable so long as the price bid is not increased. Consideration of this bid is legally proper.

3) All Brake offered an alternate body, actually a better unit, at a reduced price if we wanted it, by letter, after bid opening.

As indicated in our comments on point 2 above, it is proper to negotiate with the low bidder in order to *reduce* the price bid. A letter offering an alternate item to that bid after bid opening does not in any manner affect the validity of the bid itself. If it is determined, however, that the alternate would be acceptable and the cost would be lower than that bid, there would be nothing legally objectionable to accepting the alternate, the best interests of the City being served thereby.

It is our opinion, therefore, that none of the above three points constitute irregularities in the low bidder's such that rejection for any or all of said points would not be warranted.

FOOD SERVICE CONTRACTS— LOWEST RESPONSIVE BIDDERS

(Purchasing Agent—R. L. H.—June 22, 1978)

Your recent letter in the above entitled matter forwards to us the bids of two of the three bidders on this specification and requests our opinion as to the propriety of an award being made to ARA Services, Inc.

We have reviewed the specifications for this procurement and find that you had requested bids from vendors on a "Unit price per meal" basis and, in addition, to aid the prospective bidders in determining their unit prices, you advised all prospective bidders of an approximate minimum, maximum and average daily number of meals that may be needed.

Our review of the bids indicates that ARA did submit a bid that was responsive insofar as it stated a "Unit price per meal" on the line provided therefor on the proposed pages. In addition, they indicated that in the event payment was made within 30 days of billing, a one percent discount would apply. The discount was offered even though the specifications indicate that payment would be made within 8 to 10 weeks of billing.

Our review further indicates that Mass Feeding Corporation chose not to respond to the invitation to bid in the manner requested and submitted a bid with varying unit prices per meal dependent upon quantity delivered—the more meals needed, the higher the unit price per meal.

Since the specifications are silent on the method of canvassing bids, the only proper method is to compare the prices bid as the documents request, i.e., unit price per meal. On this basis, the bid of Mass Feeding Corporation could not be compared with the bid of ARA. Since Mass Feeding DID NOT responsively bid the unit price per meal requested; but, as indicated hereinabove, did bid an upward sliding scale of unit prices dependent upon quantity.

If we are to give Mass Feeding the benefit of the doubt and review their bid on a similar basis as the bid of ARA and as requested by the specifications, an estimated number of meals must be used for the calculation. The easiest figure to use is the estimated average per day—30,500. On this basis, the total cost of a daily feeding varies only \$166.70 between ARA and Mass Feeding with Mass Feeding being lower. To be fair, however, it would also be necessary to give ARA the benefit of the doubt regarding their discount and ARA would then be the low bidder by the amount of \$89.00 on a daily feeding. If we use a greater number of meals than the estimated average per day, the total cost of a daily feeding becomes even closer in dollars and with not too many additional meals, ARA becomes lower without taking the discount into consideration.

Your letter as well as the letter attached from Mass Feeding refers to their request to split the award, giving Mass Feeding the first 15,000 daily meals and giving ARA the balance. Although this procedure may save money for the City, there are two serious problems: first, a contract must be awarded to the lowest responsible bidder with no provisions made for splitting of awards between two or more bidders; and, second, ARA has not indicated that they would be interested in a split, especially where they would only be asked to deliver the coverage beyond the first 15,000 meals daily.

Taking all of the foregoing into consideration, it is our opinion from a strictly technical position that the *only responsive* bid of the two submitted for our review is the bid of ARA Services, Inc. It is our opinion from a subjective position that the best interests of the City would only be served by awarding a contract based upon a known price per unit and not by awarding a contract where the price per unit increases as the quantity increases.

In direct reply to your request, then, it is our opinion that an award to ARA Services, Inc., would be legally proper, they being the lowest responsible bidder making a responsive bid to the invitation for bids.

COLLUSION AMONG BIDDERS

(Purchasing Agent—D. P.—August 14, 1978)

Your recent letter requests an opinion from this office with respect to a contract awarded to Allied Asphalt Paving Company. Your letter states that the subject specification was opened April 5, 1978 with Allied being the lowest bidder.

On April 5, 1978, the City Council of the City of Chicago enacted an ordinance which reads as follows:

Section 26-26. No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any other public entity, in that officer's or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of *freedom of competition* by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct. Ineligibility under this section shall continue for three years following such conviction or admission. For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity shall be chargeable with the conduct.

We are advised that on July 25, 1977, a judgment was entered in the United States District Court finding Allied guilty of conspiracy to violate the Sherman Anti-Trust Act, 15 U.S.C. § 1, by agreeing with other construction companies to limit and fix the amount of bids for contracts. As a consequence, Allied was ineligible to be awarded the contract.

The contract here, then, appears to have been awarded by mistake, presumably arising from the fact that the specification was opened on the same day that Section 26-26 of Chapter 26 of the Municipal Code was enacted.

Accordingly, it is the opinion of this office that the contract was improperly awarded to an ineligible bidder, and should be terminated immediately, with notice to Allied, together with the reason for termination.

CITY ELECTRICAL BUREAU CONTRACT
OFFICER—EFFECT ON
LOW BID

(Purchasing Agent—R. L. H.—
November 27, 1978)

Your letter and attachments of recent date requests our opinion relative to the letters from Halm Construction Company on the above cited matter.

A review of paragraph 7 on page P-2 of the Contract documents reveals clearly that some words were omitted between "... based on the" and "or" on line 3 of said paragraph. A close analysis of the language on Page P-1 together with paragraphs 5 and 6 on Page P-2 indicates that the only words that could

in any way be interpreted as having been omitted in paragraph 7 are the words "Base Bid" such that the true import of said paragraph 7 provides for the Purchasing Agent to canvass bids on the basis of the Base Bid alone or on the basis of the Base Bid plus the add on for Alternate No. 1. Although the words "Base Bid" were omitted, it is our opinion that they are implied and are necessary to give import to said paragraph 7.

The letter from the City's Bureau of Electrical Wiring and Communications offering to do the electrical work covered in Alternate No. 1 is not a bid and, therefore, need not be formalized in standard bid form. Said letter merely is submitted as advice to the Purchasing Agent that the City Bureau is ready, willing and able to do the electrical work with City forces for a certain amount if the Purchasing Agent determines that it is in the best interest of the City to not award Alternate No. 1 to any of the bidders for the General Work.

Since this specification requests bids for the General Work with a bid for the Electrical Work requested as an Alternate add on, a contract may properly be awarded to the lowest responsible bidder for said General Work alone with the bids therefor being canvassed on the Base Bid (General Work) alone.

Based upon the foregoing, it is our opinion that the contention of Halm Construction Company, as set forth in their letters of November 2, and November 8, is without merit.

Our review of the tabulation of bids reveals that the low bidder for the General Work alone (Base Bid), is Ruby Construction Company. Further, the low bidder for the General Work and the Electrical Work (Base Bid plus Alternate No. 1) is Halm Construction Company. We also note that the combination of Ruby for the General Work and the City's Bureau of Electrical Wiring and Communications for the Electrical Work would be approximately \$5,000.00 less than the bid of Halm.

Dependent upon your determination of what would best serve the interest of the City, a legal award of a contract could be made either to Halm for the entire project or to Ruby for the General Work alone with EWC doing the electrical work.

WAIVER OF RIGHT TO REJECT CONTRACT AWARD

(Purchasing Agent—R. L. H.—May 17, 1979)

Your letter of March 22, 1979, with attachments, requests our opinion as to whether or not you can approve an increase in the unit price bid by the low bidder in the above specification.

Our review of the file reveals that bids were opened on July 13, 1978, and that an award was made to Badger Meter Company on November 2, 1978, and received by Badger on December 15, 1978. On February 22, 1979, Badger directed a letter to your office requesting an increase in unit prices due to increased costs since the date of bid opening. Your rejection of said request gave rise to a second request for a lesser increase which, in turn, gave rise to your request to us for an opinion.

Pursuant to the contract documents, a contract was to be awarded within 60 days after bid opening and, if not so awarded, a vendor awarded a contract thereafter had the right to reject said award.

Badger received notification of an award on December 15, 1978, over 150 days after bid opening and could have, within a reasonable time thereafter, rejected said award. Since they chose not to reject the contract award and merely requested an increase in unit prices on February 22, 1979, over 60 days after receipt thereof, they have waived their right to reject the award and are bound to deliver at the prices bid. Their decision to NOT reject the contract award is even more evident by the fact that they followed up the rejection of their first request for an increase with a second request for an increase, though for a lesser amount.

It is our opinion that Badger be advised that their bid was properly accepted and delivery of the quantities set forth in the contract at the unit prices bid will be expected since there is no provision for increasing the bid of a low bidder after award of contract.

If we can be of any further service to you in this matter, please advise.

FAILURE TO PROVIDE NOTICE OF BID DOCUMENT ADDENDUM—EFFECT ON BIDDING

(Purchasing Agent—R. L. H.—June 14, 1979)

Your letter of May 23, 1979 with attachments, advises us that the apparent low bidder on the above cited specifications failed to acknowledge receipt of Addendum No. 1, and, when requested to so acknowledge, refused to do so since they never received same. Your letter further advises that said bidder has requested withdrawal of his bid and you are asking our opinion on said requested withdrawal.

The facts adduced from further inquiry indicate that through some *advertence* in your Department no record was made when Illinois J. Livingston, Co., picked up a set of bid documents and made a deposit of \$50.00 therefor. Therefore, when Addendum No. 1 was sent out to all persons who had picked up the bid documents, no said Addendum was mailed to them.

Although it appears that the necessary requests for rescission of contract are present such that this apparent low bidder could be allowed to withdraw his bid without penalty as requested by him, this procedure would cause the specification to be readvertised for reasons discussed in prior opinions over the years, and, would cause a delay in the performance of the work, work which is needed as soon as possible.

Where part of the necessary bid documents which changes the scope and cost of a project were not sent to a prospective bidder and he submits a bid based upon a scope of work different from that required under the specifications, as amended, the said bid is, in fact, non-responsive to the said specifications and must be rejected on that basis unless the said bidder agrees in writing to do all of the additional work required by the bid documents he had not received for the price bid.

It is our opinion in this specific case, then, that the bid of Illinois T. Livingston Company be rejected as being non-responsive and the contract be awarded to the next lowest bidder, G & M Electrical Contractors, who are, in fact, the apparent lowest bidder whose bid is responsive to the specifications, if it is determined that they are a "responsible" bidder. Livingston's bid deposit should be returned to them.

If we can be of any further service to you in this matter, please advise.

FIRM PRICE CONTRACT—AVAILABILITY OF ESCALATION

(Purchasing Agent—J. P. D.—August 6, 1979)

Your letter of recent date requests our opinion as to whether you may allow an increase in price to Vulcan pursuant to the 6% escalation authorized in trucking rates by the Illinois Commerce Commission.

When a company bids on a City of Chicago invitation for bids, he agrees to supply certain materials for a certain firm price. The price set forth is firm both for sixty days after bid opening and for the term of the contract once a contract has been awarded.

The only escalation of price available during the term of a contract is that escalation specifically allowed in the contract. Since we have no such escalation clause in any of the three contracts referred to herein above, the City and Vulcan have unequivocally agreed that the prices set forth in the contracts between the parties shall remain unaltered during the term of the contract.

It is our opinion, therefore, that the City of Chicago is not bound to pay any increase to Vulcan there being a firm price contract, without availability of escalation, between the parties.

VIOLATION OF BID INSTRUCTIONS

(Purchasing Agent—J. P. D.—August 6, 1979)

Your recent letter forwards to us a xerox copy of one copy of the purported bid of GMC Truck and Coach Division with the advice that said bidder was the apparent low bidder and requests our review of said bid and our opinion as to whether said bid is responsive and must be considered in the evaluation of bids.

To start with, the bidder violated the instructions and removed part of the bid documents from the booklet, submitting only a portion thereof and not submitting one of the important components, i.e., the signature page of the proposal. Thus, the bid, as submitted is unsigned and but for the power of attorney, there would be no way of knowing who the bidder is.

Further, the proposal clearly indicates that the *unit price* is *over two million dollars*. This is obviously an error but it is our understanding that the bidder has made no effort to correct same such that said price must remain as bidder's unit price.

It is our opinion, without going into further detail, that the purported bid of GMC is, in fact, not a responsive bid and need not be considered at all in the evaluation of bids.

COMPLIANCE WITH BID SPECIFICATIONS IN BID PROSPECTUS

(R. L. H.—October 29, 1979)

Your letter of recent date forwards for our review a letter from the law firm of Schafer and Schafer as well as the bid submitted by Davies Imperial

Coatings, Inc., and requests our opinion as to whether award of contract to Crawford Laboratories was justified.

The bid documents included a page entitled "Statement of Characteristics" which was to be filled in pursuant to a laboratory analysis of the paint sample bid upon and Davies' bid was submitted with this page totally blank, making said bid unresponsive.

Davies' attorney properly raises the point that the City already had a copy of the "Statement of Characteristics" since said form was required to be submitted along with the paint sample for the pre-bid qualification testing and that such a Statement was in fact submitted with *each* of the three different samples of paint submitted for this qualification testing.

If a bidder had submitted one sample of paint for the qualification testing which was then approved for bidding, his failure to submit a filled in "Statement of Characteristics" with his bid could not be a major defect since said Statement was already in the hands of the City. However, in a situation as exists here where a bidder has received an approval on *two* of three different samples, submitting a bid without a "Statement of Characteristics" is a major defect since there is no way of knowing which of the paint samples is being bid.

Rather than summarily reject Davies' bid as being non-responsive, which you had every right to do, you gave Davies an opportunity to submit the "Statement of Characteristics" on the specific paint sample bid and this was received approximately a week after bid opening. Computation of the Award Formula for the sample of Davies' paint represented by said "Statement" indicated that said bid was not the lowest and best bid and, therefore, the contract was awarded to another vendor.

Submission by Davies weeks later of a second "Statement of Characteristics" for the second of the two approved paint samples was an attempt to have the contract awarded for this paint sample. Davies was properly advised that it was too late. The courtesy to allow a required portion of the bid documents to be submitted a week later cannot be allowed to become the illegality of allowing a revised submission of said required portion of the bid documents to be submitted weeks after that. A prospective bidder is entitled to only "one bite of the apple" and cannot submit a second bid weeks after bid opening when he finds that he was unsuccessful on his initial bid.

Davies was given the opportunity to submit the characteristics of the paint sample he was bidding on so his non-responsive bid could be considered in the canvass of bids. Since Davies had two paint samples approved for bidding, he had the opportunity to submit either of the two samples or advise the City (as he apparently is now attempting to do) that his bid price applies to both samples and the City can select whichever sample it desires if he is awarded the contract.

Davies made a choice of one of the two samples—apparently the wrong one—and this is the only bid Davies has. After canvass of bids the award was made to Crawford, whose price for an approved paint sample made them lowest responsible bidder pursuant to the Award Formula with Davies coming in second.

Our full review of this situation reveals that a contract was properly awarded to Crawford Laboratories and the objections raised by Davies' attorneys are legally invalid.

Section B.—EXECUTION AND
INTERPRETATION

PRICE ADJUSTMENT FOR
OPTION AGREEMENT

*(Commissioner, Department of Streets and Sanitation
—R. L. C.—August 27, 1973)*

I have reviewed your letters of recent date relating to steam sales from the Southwest Incinerator.

The steam agreement which was entered into April of 1961 between the City and the Produce Terminal Corp. secure for Produce Terminal Corp. the right to an additional five year extension of the agreement at *their* option. This right has accrued to the purchaser by force of the agreement and is unencumbered by any condition relative to renegotiation of other terms and provisos of the agreement.

You ask that "an attempt be made at this time to adjust the fuel reimbursement clause to more closely reflect the increased cost for this fuel." Such an adjustment is not contemplated by the terms of the original agreement and you cite no facts which would support the conclusion that such negotiations would be fruitful. Produce Terminal Corp. clearly has the right to an extension of this agreement through the option period without any increase in compensation. Unless the City is prepared to deliver some service or product which is in addition to that already covered by the agreement, any suggested adjustment of the fuel charges would be without consideration and therefore highly unlikely of success.

ACTION FOR ACCOUNTING REQUIRED
FOR PROTECTION OF LIEN

*(Acting Comptroller—R. L. H.—
October 2, 1973)*

We are in receipt of a letter dated October 2, 1973, from the attorneys for the general contractor on the O'Hare Parking facility, copy attached, which states, among other matters, that the above cited claims for lien against public funds were filed more than sixty days ago and that the funds retained therefor by your office should be released to them.

We have reviewed your file in this regard and find that the Notice of Claim for Lien in behalf of Pullman Sheet Metal Works, Inc., was received in your office on June 29, 1973 and that the Notice in behalf of Honeywell was received in your office on July 27, 1973, more than sixty (60) days having elapsed since each of the two filings with you.

We have checked the records of the Clerk of the Circuit Court of Cook County, County Department, Chancery Division, and find that no *action for an accounting* was filed by either of said claimants either within sixty (60) days from service of their Notice of Claim or since said date to the date hereof.

Pursuant to Chapter 82, Section 23, Illinois Revised Statutes 1971, a lien claimant must file an action for an accounting within sixty (60) days of the

serving of his Notice For Claim Against Public Funds and, if said suit is not timely filed, the obligation of the government body to withhold from the general contractor the amount claimed by the claimant subcontractor is terminated.

Since more than sixty (60) days have elapsed from the date of service of the two Claims for Lien referred to hereinabove and, since no action for an accounting has been filed by either of these two claimants and, since the general contractor is requesting return of the monies withheld from him pursuant to the aforesaid Notices of Claim for Lien against Public Funds and, since there is no legal reason under the Lien Act for further withholding of these monies by your office, you are therefore advised that it is our opinion that the funds heretofore withheld from the Consolidated/Brighton Joint Venture due to the Claims of Pullman Sheet Metal Works, Inc., and Honeywell, Inc., in the sums of \$133,547.63 and \$63,000.00 respectively, be released to the Consolidated/Brighton Joint Venture.

If you have any questions in this matter, please advise.

WATCH SERVICE LIABILITY FOR THEFT LOSS

*(Commissioner, Department of Urban Renewal
—R. L. H.—January 7, 1974)*

Your recent letter with attachments requests our advice as to the propriety of withholding the sum of \$3,000 from the aforesaid contractor's last billing due to the theft of personal property having a remaining value of \$3,248 while the premises were under 24-hour guard and our opinion as to the liability of the contractor for said theft loss.

The last paragraph of the Detailed Specification entitled "Scope" on page D-1 states as follows:

"It is the intent of these specifications to provide for a guard service only. It is not the intent of these specifications to hold the contractor or his surety responsible for any damage incurred to any of the properties guarded under this contract or to hold said contractor or his surety responsible for any illegal uses of vacant land. However, in those cases in which guards are found to have been responsible for stolen or damaged property, or are found to have allowed unauthorized persons into guarded buildings, the said contractor or his surety are liable for reimbursing the Department for the full amount of damages incurred."

Our review of the materials forwarded to us reveals that the two guards on duty at the premises during the time of the theft took polygraph tests which allegedly absolved them from any knowledge of or complicity in the aforesaid theft which should be sufficient to absolve the contractor from liability pursuant to the above cited contract language.

We are disturbed, however, at what appears to be a lack of cooperation on the part of the contractor insofar as copies of the said polygraph tests have not been delivered to your Department and/or the Chicago Police Department and, in addition thereto, some very important questions appear not to have been asked of the guards. We wonder why a guard who was not due to be on duty until Noon on Sunday, September 9, 1973, stopped at the building at 10:30 a.m. We further wonder why he was admitted to the building at all and

why by the janitor rather than the guard who was supposed to be on duty at the time, and who is supposed to see who enters the building. We also wonder where the on-duty guard was when the off-duty guard entered and left the building and then returned for his tour of duty, and, even more important, we wonder how personal property of this magnitude could be removed from the premises with guards on duty and the said guards did not even notice that the property was gone. The property could not have been removed by one person and it must have taken some length of time.

The report from Round-The-Clock Security dated October 31, 1973, also includes some comments to the effect that "... Bill the janitor has keys to the building, and that he often takes items out of the building." It might be interesting to determine whether either guard on any of these alleged occasions attempted to stop this removal of "items" and/or whether any reports of said removals were ever forwarded to the Department for investigation.

Although value judgments are not in the province of this Department, we cannot help but feel that something doesn't seem right about this situation and these thefts, both the current one and the one that occurred in February.

Although the contractor's liability for the value of the said property is questionable since said liability attaches only if "... the guards are found to have been responsible for stolen property ..." or are ... "found to have allowed unauthorized persons into guarded buildings ..." and there have not been such findings, we believe that the withholding of the final billing sum by your department should serve to force the contractor and his guards to fully cooperate in the matters set forth above. For the sake of argument, also, the presence of an off-duty guard in the building is in effect the presence of an unauthorized person since the said guard does not become an authorized person until he is ready to begin the performance of his guard duties at the beginning of his tour of duty.

It is therefore our opinion that your Department may properly withhold the sum being withheld from the contractor pending a full and complete investigation. If it cannot be shown that the guards violated the terms of the contract cited above, the funds withheld should be released to the contractor and he is then absolved from liability. If, on the contrary, the findings required in the paragraph of the contract cited above can be made, the contractor would be liable to the City not only for the sum withheld, but for the full amount of the loss incurred.

If we can be of any further service to you in this matter, please advise.

PRICE INCREASE REQUEST DURING CONTRACT TERM

*(Acting Purchasing Agent—R. L. H.—
January 7, 1974)*

Your letter of January 25, 1974, forwards for our review a letter dated January 23, 1974, from the Acting Commissioner of Public Works to which is attached a letter from Michael McDermott & Company, the low bidder on the above cited specifications, requesting an additional sum of \$20,000 as a condition to their accepting the award of the above cited contract.

The bids on this specification were opened on July 24, 1973, and formal award made on November 28, 1973, pursuant to your letter to us. The contractor, in addition, sets forth that he received a copy of the contract indicating its award

to him on December 21, 1973, almost a month later. In any event, award was not made until 127 days after bid opening at the earliest.

The contract documents provide that all bids must be firm for sixty days after bid opening or for 90 days after bid opening if another agency must approve the award. Here, the U.S. Corps of Engineers' approval was required so the 90 day provision applies. The Contract documents also provide that an award will be made within 90 days where another approval is necessary and unless requested to extend this time for award by the Purchasing Agent, upon the lapse of said time period, the bidder may choose not to be bound thereto and may reject the award. In the instant case, there was no such request.

The contractor, McDermott, has determined that there has been a marked change in the economy during the time between bid opening and award which would cause an increase in his costs for performance. He has properly exercised his rights under the Contract language and has refused to accept the award of the contract under the same terms as bid. He states, however, that he will perform the aforesaid contract if an additional \$20,000 can be added to the contract price.

Your letter also advises us that the spread between McDermott's low bid and the next bidder is just under \$40,000. If an additional \$20,000 were given to McDermott, the total would still be less than the next lowest bid.

Ordinarily, proper procedure at this juncture would be to reject all bids due to lapse of time and readvertise the specification. Knowing, however, that the state of the economy has not bettered and is, in fact, getting worse, it is an almost certainty that the prices that would be obtained on a re-bid would greatly exceed the price bid by McDermott even with the additional sum requested included.

It is our further understanding that:

1. Rejection and readvertisement and re-approval by the Corps of Engineers would most likely cause a contract to be awarded in fall 1974.
2. Costs, both labor and material, are continually escalating and could cause a great increase in the cost of this work unless said work is commenced as soon as possible.
3. The delay in award was occasioned by delays by the U.S. Corps of Engineers in approving the contract.
4. The U.S. Corps of Engineers has indicated that they will pay the additional \$20,000 requested by the contractor.

Upon review of all the foregoing, it is our opinion that the best interests of the City would only be served by commencement of this project as soon as possible. To that end, it would also be to the best interests of the City to grant McDermott up to, but not in excess of the additional monies requested by him so he will accept the award of the contract and proceed immediately with the work at hand.

To give effect to the foregoing, we suggest that a contract modification be processed in a sum not to exceed \$20,000 with payment thereunder to be based upon evidence of increased costs to the contractor over and above the prices upon which his bid was based. When the contractor is advised of the processing of this modification, he can, at the same time, be given the starting date for his performance of the work under the said contract.

Since the Acting Commissioner of Public Works also directed his letter of January 23, 1974, to our office, a copy of this opinion is being forwarded to him in reply to that request.

We would also suggest, for future reference, that whenever it appears that the allocated time between bid opening and award is running out, a timely request be made to the low bidder, in writing, to extend the time for award.

BOND IN LIEU OF SUBCONTRACTORS FINAL WAIVER

*(Acting Commissioner of Public Works—
R. L. H.—April 18, 1974)*

We have reviewed the proposed bond attached to your letter of April 1, 1974, in the above entitled matter pursuant to your request.

It is our opinion that if the penal sum of the said bond were increased as provided in your letter, the said bond when fully executed will be exchanged for the monies currently being withheld from the General Contractor.

We assume that the standard forms required of a general contractor prior to final payment will still be required of this general contractor, the only difference in handling final payment being a substitution of the aforesaid bond for a final waiver from the one subcontractor who has not submitted same.

If we can be of any further aid to you in this matter, please advise.

BREACH OF CONTRACT BY PRIVATE WATCH SERVICE

*(Commissioner, Department of Urban Renewal
—R. L. H.—May 8, 1974)*

Attached to your letter of April 1, 1974, in the above matter are answers received by you in response to questions posed in our opinion to you of January 7, 1974. The copies of the polygraph examination reports on examinations given to the above cited contractor's two guards was sent over to our office for review under date of April 29, 1974.

Our initial opinion in this matter indicated that it was not the intention of the contract documents to hold the contractor liable for any theft losses occasioned from the guarded premises unless the guards were either responsible for the thefts or were responsible for allowing unauthorized persons into the premises. It appears that the guards are clear on these points.

The answers submitted by the contractor to the questions posed in our aforesaid opinion and the two polygraph examination reports reveal additional items which need proper answers, however, prior to resolution of this matter.

We questioned what a Noon to Midnight guard was doing on the premises at 10:30 A.M. We are advised that he came early so he could have something to eat before he started work and stopped in to see if the guard on duty wanted something before he ended his tour of duty. There has been no advice as to whether or not the two guards spoke to one another at this time to establish that the guard on duty was, in fact, on duty.

This question now arises because the polygraph examination reports reveal that the guard on duty left his post unattended *sometime that morning* in response to an emergency call to come home and further that the guard due to come on duty at Noon actually arrived for work at 12:15 P.M. after having

come at 10:30 A.M. and left to get something to eat. In addition, the Midnight to Noon guard who left early was at his place of residence at 12:15 P.M. when telephoned by the other guard upon discovery of the theft.

There is no question from the materials submitted to us that the premises were left unattended for a period of time prior to 12:15 P.M., the exact beginning time of this lack of security being currently unknown to us.

Since our contract with Round-The-Clock Security, Inc., provides for the type of security that their name implies, there was a breach of the contract on the morning of September 9, 1973, inasmuch as the premises were left unattended. Since the loss was discovered by the Noon to Midnight guard as soon as he reported for work, the only assumption that can be made is that the theft occurred during the period when *no* guards were present.

We would suggest that the foregoing be further investigated with the contractor and, if no satisfactory explanation received, the monies withheld be forfeited in payment of the theft loss occasioned not by guard complicity in the theft but by contractor's breach of contract in leaving premises unguarded.

If we can be of any further service, please advise.

TERMINATION OF AIRPORT CONCESSION CONTRACT

*(Dell Airport Advertising—R. L. C.—
—October 21, 1974)*

As a consequence of the recent verdict in the case entitled *USA v. Bush*, 74 CR 458, the City of Chicago, on advice of this office, has determined that the interest of the City is best served by soliciting bids for the exclusive right to operate the advertising display and exhibit concession at Chicago's three airports, and terminate the contracts which you have enjoyed for many years.

Advertising for proposals was initiated on Friday, October 18, 1974, and the bid opening is scheduled for November 22, 1974.

This is official notification of the City of Chicago's intention to terminate your contract for the advertising display concession upon the event of an award of contract to a successor concessionnaire by City Council action.

DELAY IN RELEASE OF RETAINED FUNDS

*(Acting Commissioner of Public Works—
R. L. H.—November 25, 1974)*

Your letter of November 4, 1974, in the above entitled matter, requests our opinion as to the propriety of the request of Arthur G. Dietrich Company for release of retention from the 20% being held down to 5% for reasons set forth therein.

Your letter indicates that the Contractor's contract with the City for the furnishing of the aforesaid materials provided that 20% of the sale price would be retained by the City until the materials were fully installed and acceptably operated. The contract also provided that the installation was to be effected by City personnel as soon as practical after delivery.

Your letter further indicates that although delivery was completed on August 23, 1973, installation was delayed due to a decision to contract out the installation rather than utilize City employees as provided for in the contract with the result that installation and testing has still not been completed, 15 months after delivery.

Since the delay in payment of the retained percentage to this contractor was occasioned by the City's failure to follow the terms of its contract with the contractor by having the installation performed by another contractor rather than City forces, we must agree with the contractor that the burden placed upon him by this delay is unconscionable.

It is therefore our opinion that upon receipt of a proper bond from the contractor in an amount representing 75% of the retention, all monies being currently retained in excess of 5% of the contract cost can be released to the contractor.

CONTRACT FOR REMOVAL AND DISPOSAL OF SOLID WASTES

*(Acting Commissioner, Department of Streets and
Sanitation—R. L. H.—August 15, 1975)*

Your letter and attachments of June 6, 1975, requests our opinion as to the expiration date of the current contract for the above cited requirement.

The contract was awarded formally on October 3, 1972, for a three-year term such that it would expire ordinarily on October 2, 1975. Since, as you point out this termination date falls in mid-week, we see no problem in extending this contract the additional few days until the end of the week to enable the new contractor to commence operations at the beginning of the next week (Monday, October 6).

We now understand that a bid opening will be held on the new contract on September 5, 1975, and, in the event the current contractor is the low bidder thereon, there is no problem at all. In the event another bidder is low, a changeover on the weekend of October 4-5 can easily be processed.

LEGAL RIGHTS TO EFFECT COLLECTION OF OUTSTANDING OBLIGATIONS

*(Assistant Executive Director, Chicago Committee on
Urban Opportunity—H. A. T.—September 23, 1975)*

A letter from your office dated August 18, 1975 recites that Model Cities (CCUO) entered into a contract with the Chicago Dwellings Association (CDA) for its services; that, thereafter, the CDA entered into a contract with Ecko Construction Company; that, there is due from Ecko Construction Company to the CDA the sum of \$13,470.00 which, under the terms of its contract with Model Cities, upon collection thereof from Ecko Construction Company, should be returned to Model Cities.

You also advise that Ecko Construction Company, a Corporation, was voluntarily dissolved by the State of Illinois on April 11, 1974. At our request, on September 12, 1975, you furnished us with a copy of a contract between the City of Chicago and CDA No. 2, dated July 1, 1973. The contract essentially provided that CDA No. 2 would fund and secure rental units for disadvantaged families and subsidize the rentals where required.

Section 3 of said contract provided:

Compensation and Method of Payment: a. Compensation. The Contractor shall be compensated on a reimbursement basis for services performed and costs expended hereunder pursuant to the budget set forth as part of the Chicago Area Coordinated Leasing Program, Project No. 2581, description attached hereto.

Section 8. Terms and Conditions: provided, in part, that the allowable costs of this Project are the costs determinated and set forth in the Budget attached to this contract and made a part hereof.

The Budget referred to provides that \$960,000 be expended for rental subsidies and the balance of the contract price of \$1,171,543 was to be expended for Administrative expenses.

Your letter requested our opinion on the following:

- (1) Does the City have any recourse against Ecko Construction Co.
- (2) Does the City have any recourse against CDA No. 2.

In regard to Ecko Construction Company the City had no direct contractual relationship with it. Any claim against Ecko Construction Company, that the City may have, if any, would be in the nature of a tort action. However, you advise Ecko Construction Company was voluntarily dissolved by the State of Illinois April 11, 1974. Although creditors of a dissolved corporation may still proceed against it for a period of 2 years after dissolution (*Chap. 32 of Ill. Rev. Stats., Sec. 157.94*), there appears to be no assets in the dissolved corporation, and as a practical matter, without belaboring the issue, it does not appear that our claim, if any, is collectible.

The City may have a claim against CDA #2 based upon its direct contractual relationship with this Agency. However we are confronted with a lack of facts to assert the same.

The contract provides the City will reimburse CDA #2 for its expenditures, based upon thoroughly documented invoices. Assuming there was some error in the invoices presented by CDA #2 so that the City overpaid CDA #2, the City would have a cause of action against CDA #2. However, assuming that CDA #2 transferred funds to Ecko Construction Co., without the consent of the City Purchasing Agent, such action would be in contravention of the provision on Page 6 of the General Conditions, entitled "Subletting and Assignment" which provides:

The Personal Services Contractor shall not assign this Contract or any part therein unless otherwise provided or without the written consent of the Purchasing Agent, but in no case shall such consent relieve the Personal Services Contractor from the obligations hereunder, or change the terms of the Contract.

The Personal Services Contractor shall not transfer or assign any Contract funds or claims due or to become due without the written approval of the Purchasing Agent having first been obtained.

The transfer or assignment of any Contract funds, either in whole or in part, or any interest therein, which shall be due or to become due to the Personal Services Contractor, shall cause the annulment of said transfer or assignment so far as the City is concerned.

In either event, the City would have a cause of action against CDA #2.

CERTIFICATE OF ESTOPPEL FOR PREMISES LEASED BY CITY

(City Comptroller—R. L. H.—January 29, 1976)

Your inter-office communication of December 17, 1975, to the Corporation Counsel in the above-entitled matter has been referred to the undersigned for review and reply.

The letter from the building manager of December 12, 1975, intimates that the estoppel certificate submitted for signature is provided for and required in the lease document for the premises leased for the Mayor's Office of Manpower. We have reviewed the said lease and find nothing therein contained which makes reference to an estoppel certificate to be executed.

The lease was authorized by the City Council by the parties in May 1975 and provided for a two-year tenancy commencing on June 1, 1975. The lease further provided that rental begins on the first of the month following actual occupancy and that the two-year tenancy, if not begun on June 1, 1975, would terminate two years after actual occupancy. In addition, the lease provided for certain work to be done by the lessor to make the new space in the building ready for the tenancy.

The certificate of estoppel that is being requested at this time merely serves to clarify the tenancy period, to indicate that the lessee is satisfied with the premises as prepared by the lessor for the tenancy and that the lessee has no other complaints of any nature regarding matters set forth in the lease agreement as of the date of execution.

Since execution of this certificate of estoppel is not required in the lease, it is our opinion that the certificate should not be executed.

SUBCONTRACTOR CLAIM SETTLEMENT

*(Commissioner, Department of Human Services—
R. L. H.—May 27, 1977)*

Requests from your department have been received in the past regarding the liquidation of the above matters. We are currently attempting to determine the procedures legally necessary to either collect or write off the advance audit discrepancy of \$61,044 in 738-2488 and will advise you thereon at a later date. This letter is being sent to advise you of the current status of 896-2558.

On August 13, 1973, Community Building & Maintenance Corporation entered into a construction contract with 51st-King Drive Partnership for the rehabilitation of certain property located on the northeast corner of 51st Street and King Drive.

Through Model Cities Funds, Community Building & Maintenance Corporation was granted a loan in the sum of \$140,000.00 for a construction bond. This sum is presently held by Baird & Warner, the mortgagee, together with earned interest in the amount of approximately \$30,000.00 subject to the final completion of all work.

Community did not complete the rehabilitation work and disputes arose between the principal and sub-contractors regarding the poor performance of the work. The contract for the rehabilitation was in the amount of approximately One Million Dollars.

In order to prevent a complete loss of the mortgage funds, a Title Indemnity Account was provided through construction escrow #60726 and the sum of \$116,593.00 was deposited which indicated unpaid contractors as follows:

Solar Heating & Air Conditioning Co.	\$ 44,167.66
Scientific Window Co.	15,228.00
Wallcraft Inc.	14,722.00
Lavin Roofing Co.	14,495.00
James Files Electric	14,601.00
Broughom Carpet Co.	18,675.00
Whirlpool Corp.	2,300.00
Pederson Asphalt Co.	1,495.00
Bills Blinds	1,130.00
Gum Iron Works	196.00
Martin Yelwick	170.00
Archway Steel Erection	145.00
Blacksmith Shoppe	160.00
	\$117,484.66

The foregoing clearly indicates that possible liabilities exceed the amount of the Indemnity Account.

Through legal proceedings instituted by the various subcontractors in cases entitled *Solar Heating and Air Conditioning Co. v. 51st-King Drive Partnership, et al.* Case #75 CH 653 and *C.B.M.C. Builders, Inc. v. 51st-King Drive Partnership, et al.* Case #75 CH 6974 consolidated, all intervening claims were settled and releases of the mechanic's liens secured with appropriate dismissal with prejudice. The only remaining claim is C.B.M.C. Builders, Inc. The claim of C.B.M.C. Builders, Inc. is in the amount of \$135,215.00 and is predicated upon the rights of Community Building & Maintenance Corporation.

Since Community never completed its contract and failed to pay many of the sub-contractors the claim of C.B.M.C. Builders, Inc. is, in our judgment, of little merit. The claim, however, does prevent the disbursement of the security in the amount of \$140,000.00 plus earned interest being held by Baird & Warner.

A trial in this matter would be lengthy and undoubtedly would extend over a long period of time.

The Court, after numerous pre-trial conferences, has recommended a settlement in the amount of \$5,000 for a total release of the mechanic's lien filed by C.B.M.C. Builders, Inc. This would result in a release of the advance plus accrued interest. On review of the facts and the uncertainty with respect to the availability of certain witnesses essential to the trial of this cause our office recommends a settlement as indicated by the Court in the amount of \$5,000.00 for any and all claims of C.B.M.C. Builders, Inc.

PAYMENT OF 2% RETENTION MONIES

(*Commissioner of Public Works—R. L. H.—
June 1, 1977*)

Your letter of recent date requests our opinion as to whether the present retention of \$133,278.93 can be reduced to \$30,000.00 under circumstances set forth therein.

You advise us that although the contract as originally awarded is virtually completed, the City has ordered over 80 contract modifications which cause the time for performance to be extended and also causes the time for release of retention monies to be extended. You also indicate that the contractor is extremely reluctant to accept additional modifications since any profit made thereon is insufficient to cover his expenses from overhead and loss of use of the retention monies.

There is no question that the equities of the situation seem to be with the contractor. It was his expectation when he bid this project that if awarded the contract, he would perform the terms of the contract and then be paid in full therefor. He now finds that after completion of the basic contract, he is required to perform other work by contract modifications (over 80), and 2% of the contract price is being withheld from him until such time as the City runs out of modifications. Legally, however, Section 26-13 of the Municipal Code and the contract documents themselves refer to the fact that 2% of the contract price is to be retained after completion of the contract work and until final payment is made.

In an Opinion written by this office on June 15, 1965 (Opinions of the Corporation Counsel, Vol. 25, p. 497), in response to a request to reduce retention from \$250,000 to \$50,000, it was indicated that such a release would be acceptable if the Surety on the Performance Bond gave specific approval there-to indicating that the protection under the Bond would not be affected by such release of retention and, in addition:

"... that the contract proper be presently free of claims of subcontractors and of the work remaining sufficient funds be retained, or other protection afforded, to cover the value of work to be performed by subcontractors, suppliers and materialmen, if any, who may be granted rights under Section 23, Chapter 82, Illinois Revised Statutes. . . ."

An Opinion of this office dated August 28, 1970, as a follow-up to another Opinion dated July 21, 1970 (Opinions of the Corporation Counsel, Vol. 26, p. 496), specifically referred to the Municipal Code provision (Section 26-13) regarding the 2% retention and final payment, and indicated that:

"... the purchasing agent may make final payment on a contract if he finds that the provisions of Section 26-13 have been fully complied with, namely that he should be satisfied that 'all subcontractors, workmen and employees have been fully paid, and that *the work covered by such contract has been fully completed in accordance with the provisions thereof.*'"

In response to your request, please be advised that the two Opinions referred to hereinabove set forth the circumstances under which retention monies can be reduced beyond the 2% level. We suggest that said Opinions be applied to the present situation and that you act accordingly.

LANDLORDS BILLINGS TO CITY FOR ELECTRICAL SERVICES

(Deputy Commissioner, Chicago Public Library
—R. L. H.—June 24, 1977)

Your letter of May 25, 1977, with attachments, requests our opinion as to the propriety of the Landlord's billings for electrical services on a square footage of occupancy basis.

Paragraph 3(e) of the lease clearly provides that electric service is to be provided by the Landlord, that the bills therefor are to be rendered at such times as the Landlord may elect and that the amount, *as computed from a meter*, be paid as additional rent (emphasis added). Pursuant thereto, it is our opinion that the only valid charge for electrical service payable to the Landlord is a charge computed from a meter reading of electrical service used by the Library in the leased premises.

Paragraph 26 of the lease refers to the obligation of the Tenant to pay for all water and electricity for which it is billed either directly by the utility company or the Landlord, ". . . at the same rate as charged to the Building by the City of Chicago." (Emphasis added).

Since the City of Chicago would only be charging the Building for water and NOT for electricity, the only valid interpretation of this paragraph would indicate that it does not apply to billings for electricity and, therefore, cannot support the Landlord's billing to you for such electric service.

Paragraph 2 of the lease and its various subparagraphs relate to a Base Rent Adjustment, the items to be considered therein and a reference to the figure of 20.02% being the Tenant's proportionate share" . . . for all purposes of this Lease. . . ."

A proper interpretation of this paragraph indicates that the figure of 20.02% is the Tenant's proportionate share of the Landlord's expenses for purposes of the annual rent adjustment and, possibly, a proportionate share of any other items *not* otherwise specifically referred to in the lease. Since electricity is specifically provided for in paragraph 3(e), this proportionate share figure cannot apply to billings for electricity.

It is therefore our opinion, as stated hereinabove, that absent any specific reference in the lease negating the provisions of paragraph 3(e) thereof, said paragraph 3(e) sets forth the terms and conditions under which electricity is to be paid for by the Tenant to the Landlord. It is your obligation under the lease, then, to pay for electricity to the Landlord upon being billed therefor if, and only if, said billing for electricity is based upon a meter reading.

We note that the lease, as amended, expires on July 31, 1977. We suggest that if the term is to be extended by an additional amendment, an agreement as to the proper charge for electricity be incorporated therein.

Section C. PURCHASING AGENT

LEGAL RIGHT TO EFFECT COLLECTION OF OUTSTANDING OBLIGATIONS

*(Assistant Executive Director, Chicago Committee
on Urban Opportunity—H. A. T.—September 4, 1975)*

A letter from your office dated August 18, 1975 recites that Model Cities (CCUO) entered into a contract with the Chicago Dwelling Association for its services; that, thereafter, the Chicago Dwelling Association entered into a contract with Ecco Construction Company; that there is due from Ecco Construction Company to the Chicago Dwellings Association the sum of \$13,470.00, which, under the terms of its contract with Model Cities, upon collection thereof from Ecco Construction Company, should be returned to Model Cities.

You also advise that Ecko Construction Company, a Corporation, was voluntarily dissolved by the State of Illinois on April 11, 1974. You did not furnish us with a copy of the contract between the Chicago Committee on Urban Opportunity (CCUO) and the Chicago Dwellings Association (CDA), or the date when said contract was executed, or the details of the transaction involved. However, you asked this office for an opinion as to whether Model Cities (CCUO) has any legal recourse against either the Chicago Dwelling Association and/or the Ecko Construction Company in order to recover said sum of \$13,470.00. We might point out that, if there is no contract between Ecko Construction Company and CCUO, there is no privity of contract between said parties by virtue of the purported contract between the CCUO and the CDA.

In the event that there is a contract between the CCUO and the CDA executed by the Director and approved by the Mayor and the City Comptroller, the City may have the authority to pursue a suit *against the CDA* for a breach of *its contract*. However, before we render an opinion in regard to said purported contract, we should be furnished with a copy of the same so that we may determine who are the parties and what are the respective obligations.

PAYMENT OF SALES TAX UPON ACQUISITION OF CITY PROPERTY

(Purchasing Agent—R. L. H.—December 2, 1977)

We recently have been contacted by an attorney for Funding Systems Leasing Corp. in Pittsburgh who advises that Litton Industries are currently suing them for the sales tax on the sale of the equipment leased to the City on the above cited specification, the sum of \$7,812.66, and he would like the City to remit this sum to them so they could then pay Litton Industries.

In reviewing your file in this matter and in discussion with Mr. Borenstein of your office, we note that the lease is almost at its end such that the City is entitled to obtain title to the equipment upon payment of one dollar after payment of the last (48th) monthly installment on the lease. It appears that payment of the sales tax will now be necessary to finalize the lease.

Although your file contains a letter from Mr. Patio of the Department of Buildings contending that the City has no tax liability in this matter, your attention is called to the following language of two paragraphs of the lease agreement which, when read together, clearly indicates the City's liability.

"2. PURCHASE AND ACCEPTANCE: NO WARRANTIES BY LESSOR: Lessee requests Lessor to purchase the Equipment from a seller (the 'Seller') and arrange for delivery to Lessee at Lessee's expense. . . .

* * *

"5. NET LEASE: TAXES. Lessee intends the rental payments hereunder to be net to Lessor, and Lessee shall pay all sales, use, excise . . . taxes . . . imposed on the ownership, possession or use of the equipment during the term of this lease; shall pay all taxes . . . imposed on Lessor or Lessee with respect to the rental payments hereunder, and shall reimburse Lessor upon demand for any taxes paid by or advanced by Lessor. . . ."

Since Funding Systems Leasing Corporation purchased equipment at our request, we are responsible for the sales tax related to their ownership of the said equipment.

We suggest that you discuss this matter with the Department of Buildings with a view toward properly closing out this contract at its expiration date with payment of the claimed sales tax and the requisite one dollar to obtain title to the equipment.

We further suggest that you contact Mr. Robert Andrews of Funding Systems in Pittsburgh at (800) 245-6544, to discuss arrangements for exchanging the aforementioned payments for documents of title to the equipment.

CHANGES TO ESCALATION OF LABOR COSTS CLAUSE

(Purchasing Agent—R. L. H.—June 22, 1979)

Your letter, with attachments, of June 7, 1979, requests our opinion as to whether your department should consider a revision of the allowable date for escalation of labor under the said contract. Our answer to said request is in the affirmative.

It appears that both you and the Contractor are operating under the mistaken belief that the anniversary date of the contract is April 1, a belief that can be supported by the fact that the contract term is stated on a five year period from approximately April 1, 1977 to March 31, 1982. The language of this term would lead one to believe that each year of the five ends on March 31 and the next year begins on the next day, to wit, April 1. On this basis, April 1 would be the anniversary date.

A full analysis of this contract, however, reveals that bids were not received until April 11, 1977, and that the date of the contract as indicated on the Acceptance of the Proposal is May 11, 1977. The anniversary date of the contract, then, is either May 11th, the date it bears, or May 15th, giving time for an executed copy of the contract to be received by the Contractor.

Since the contractor advises that his labor contract with the Union representing his workers on this contract has an anniversary date of June 1 such that increases in his labor costs become effective that date, it only seems equitable and proper to set the same June 1 date as the anniversary date of his contract with the City for purposes of determining escalation of labor rates.

Utilization of an April 1 date when there in fact was no contract until May 11 is improper and, as indicated by the contractor, somewhat unfair since he could only escalate 2 months labor increases for payment by the City and could have to suffer the experience of the other 10 months of each year himself.

It is only fair and equitable to set a date for escalation of labor rates which has a relationship both to the exact anniversary date of the contract and to the date when any increases or decreases in said labor rates are effective. With a May 11th anniversary date and a June 1st labor rate effective date, utilization of a June 1 date for the escalation provided for in the contract appears proper especially since said date is the first of the month following the exact anniversary date of the contract and it would be beneficial to the City to commence the payment of new rates on the first of a month.

CHAPTER XIII—PUBLIC IMPROVEMENTS

Section A. AIRPORTS

SALE OF LAND TO STATE— UTILIZATION FOR AIRPORT PURPOSES

*(Commissioner of Aviation—R. L. H.—
April 18, 1974)*

We have reviewed the above cited proposal submitted by the State's Division of Waterways pursuant to the request made at the last of a series of meetings between representatives of your Department, the Department of Public Works and the State's Division of Waterways.

As we indicated during the course of the various meetings, there is some question as to the propriety of the State's proceeding as far as they did on this project (plans, specifications, bid letting and bid opening) without having any clear indication that there would be approval by the City for the utilization of these City owned lands for the retention reservoir.

We have determined that the City Council of the City of Chicago, on February 6, 1948 (C.J.P. pp. 1888-1890), authorized the purchase of a number of assorted parcels of land in the vicinity of what is now Chicago-O'Hare International Airport with the proviso that these lands be utilized for airport purposes. The lands proposed to be used by the State in the above cited project were purchased pursuant to this authorization, the legal description of the subject property appearing in the above cited Journal of Proceedings at the bottom of the right hand column of page 1890 carrying over to page 1891.

By letter, the State has attempted to show that the project will be beneficial to the airport as a means of helping flooding conditions thereon. It is our understanding that neither your Department nor the Department of Public Works supports this contention.

Absent any benefit to the Airport, it is our opinion that a water retention reservoir, as beneficial as it may be to the Bensenville community and to the general public health and welfare, is not per se an "airport use" such that use of lands purchased for "airport purposes" cannot be legally utilized for such a reservoir.

We suggest that you advise the State's Division of Waterways that the lands contemplated for use are unavailable for the foregoing reason. We would further suggest that your Department and the Department of Public Works cooperate as much as possible with the State's Division of Waterways in seeking alternative solutions for the serious flooding problem encountered in this section of the Village of Bensenville.

If we can be of any further aid to you in this matter, please advise.

PROPRIETY OF LAND USE NEAR AIRPORT — ARENA

*(Director, Division of Aeronautics, Illinois Department
of Transportation—R. L. H.—May 22, 1974)*

We are in receipt of a copy of a letter sent on May 15th by Valjean R. Smith of your office to Commissioner Hill of our Department of Development and Planning where reference is made to our quoting of language from the O'Hare Zoning Regulations that is, in fact, not the language of the said regulations.

We have reviewed the language of the Section in issue here (10.5(2)) as sent to us with the aforesaid letter and find that our objection is still valid. The regulations provide that land use in the Land Use Restriction Zone shall be under the control of the affected political subdivision—here, Rosemont. The regulations further provide that the said political subdivision (Rosemont) shall discourage further development of places of public assembly involving educational, institutional, amusement or recreational uses.

The Village of Rosemont is in violation of the O'Hare Zoning Regulations since it, as the political subdivision in control of the land use, has made no effort whatsoever to discourage the construction of a multi-purpose arena seating 20,000+ persons, but is, on the other hand, the moving party and the proponent for such construction. It is our understanding then, that your Department is still in control of this proposed construction.

The City of Chicago still takes the position that this proposed construction will be injurious to the health, safety and welfare not only of the traveling public aboard aircraft using this approach path into the airport but also to the 20,000+ persons who will be within such structure and, therefore, should not be allowed.

INAPPROPRIATE LAND USE NEAR AIRPORT — MOTEL

*(Federal Aviation Administration, Chief of Airspace
and Procedure Branch—R. L. H.—July 24, 1974)*

Please be advised that your 7460 Notice in the above entitled case was received in our office on the afternoon of July 18, 1974, approximately six days after it was allegedly sent to us. We are also in receipt of the proponent's plans, sheets A1 through A7 revised to 7/29/74, which you forwarded to us in response to our request. Said plans are being returned to you under separate cover.

A full review of these plans, your 7160 Notice, the plans that were submitted to the City's Department of Buildings (which are *not* the same revised plans submitted to you), and various land surveys indicating ground elevations has now been made and, in addition thereto, a meeting was had with Doyle Hogland and Louis Yates of your office.

Insofar as the maximum height allowable for construction is concerned, the City can have no opposition to the 627.08 AMSL figure submitted. Your hazard determination of February 8, 1974, indicated that a height of 629.08 AMSL was approximately two feet too high and the current figure eliminates that two

feet. The height of 627.08 AMSL then, according to your determination, meets the requirements of Part 77. Since the curb on Cicero Avenue at the centerline of the proposed building is 603.76 AMSL, and since the Chicago Zoning Ordinance permits maximum construction at this site of 25 feet above the curb level, the 627.08 AMSL figure also meets the requirements of the Chicago Zoning Ordinance.

We are troubled, however, inasmuch as the proponent's "revised" plans do not appear to be revised over the plans heretofore submitted, the only apparent revision being the addition of a block on Page A1 indicating various elevations. The elevations set forth in said block are also troublesome for a number of reasons. First, the "0-0" elevation for the first floor of the building is listed as 602.08 AMSL and a survey of the property reveals that the elevation of the top of the foundation is 604.40 AMSL. Second, it appears impossible that a 25 foot building can be built to a maximum height of 627.08 AMSL upon a foundation having an elevation of 604.40 AMSL. Third, although the plans and the 7460 form refer to a maximum building height of 25 feet, the detailed construction plans of the building indicate a maximum height of 25.125 feet including the fascia at the top of the roof.

Although it appears that the City of Chicago cannot object to this proposed construction from the standpoint of height of building, it is imperative that objection be raised on the propriety and compatibility of land use. It is totally inconceivable that a motel located at the end of a major airport runway could be considered either proper or compatible land use both from the standpoints of noise and safety. We assure that any adverse public reaction due to the proximity of the motel to the runway will be ignored and no operational limitations will be imposed pursuant thereto. We suggest that the proponent be fully advised that since his proposed construction is totally against the compatibility of land use at this location, said construction is undertaken at the proponent's own peril and that under no circumstances will operations on the affected runway be limited.

It is our understanding that you have been "advised" to issue a "no hazard" determination as soon as possible. We assume that the matters referred to hereinabove will be classified prior to said issuance.

AUTHORIZATION FOR INCREASED SEWER FLOW

*(Acting Commissioner, Department of Water and
Sewers—R. L. C.—November 1, 1974)*

In our recent meetings on the subject of authorizing an increase in the sewer flow from the Chemetron property to the O'Hare Field sewer lines, apprehension was expressed that any such permission would set a precedent for similar sewer concessions for that portion of property (approximately 8½ acres) which is presently vacant and for sale and which will certainly undergo development of some kind in future years.

City Council permission was originally granted for the present hookup to the O'Hare Field sewer from the Chemetron property which in 1965 was under lease to Luminal Paints. Chemetron is not asking for authority to make alterations to the existing lines, but merely to alter the flow into the presently permitted hookup so as to better accommodate their expanded operation.

Your technical people advised us at the meeting that the present sewer

and the connection into O'Hare contains sufficient capacity to meet the present request. The unknown factor at our meeting was the prospect for use of the vacant 8½ acres and the possibilities that the developers would seek a similar O'Hare sewer tie-in using Chemetron as the precedent for such request.

I have been in contact with the Monticello Realty Corporation which is the manager for all of the subject property, both improved and vacant. They have advised me that they have no expectation of utilizing any O'Hare hookups in the ultimate development of the remaining vacant property and that no representation as to the availability of Chicago sewer and water will be made to any prospective purchasers. These oral representations have now been submitted in written form, a copy of which is attached for your file on this subject.

It should be stated for the record that this valuable industrial or commercial property, which is located within the City of Chicago, generates an annual tax return and employment potential which the City of Chicago should be anxious to protect. The present owners are anxious to remain within the corporate limits of the City of Chicago, but that desire cannot be accommodated without the continuation of water and sewer hookups for the property presently improved, which property has enjoyed those hookups for approximately 10 years. Elk Grove Village is contiguous to the property in question and would be anxious to capture this valuable industrial or commercial property and the tax revenues and employment opportunities which emanate therefrom.

In order to avoid the possibilities of disconnection of the property from Chicago and the resultant loss of this valuable asset to the City, I believe that every reasonable and legal accommodation should be made.

LEGALITY OF SALES BY RENT-A-CAR COMPANY

*(Commissioner of Aviation—R. L. H.—
February 5, 1975)*

Your letter of December 4, 1974, requests our opinion as to the legality of a promotional program contemplated by one of the rent-a-car companies at O'Hare wherein pocket computers would be available for sale at a reduced rate to persons renting cars.

Although the agreement with all of the rent-a-car companies provides for them to engage in the rent-a-car business and no other activity and the sale of these pocket computers may appear to be a totally separate undertaking, it is our opinion that this proposed promotion is intended to increase the rent-a-car business and as such can be considered within the permissive language of their agreement with the City.

It is therefore our opinion that there is nothing legally objectionable to this proposed promotion so long as the computers are only sold as an incident to the rental of a car.

FUEL SYSTEM AGREEMENTS

*(Acting Commissioner of Aviation—R. L. H.
—November 12, 1975)*

Under cover letter of October 16, 1975, you forwarded to us a request from Air Wisconsin, Inc. to join the O'Hare Fuel System. Your letter to us requested our opinion as to the legality of the Air Wisconsin request.

The last paragraph of Section 1.04 of the O'Hare Fueling System lease provides in part as follows:

"The fueling system located on the demised premises shall be made available by lessees for participation therein, on such equitable basis of payment to or for the account of lessees as may be approved by the Commissioner of Aviation, by any other Airline Party who is not a lessee. . . ." (Emphasis added)

As was pointed out in a letter from the O'Hare Fuel Committee to Air Wisconsin, Airline Parties are defined in Section 14.05 of the Fueling System lease and this definition requires the Airline to have a landing fee payment agreement with the city substantially the same as the Airport Use Agreement and, in addition, the Airline must have a certificate of public convenience and necessity issued by either the C.A.B. or the Illinois Commerce Commission or a foreign air carrier permit issued by the C.A.B.

Although the Air Wisconsin lease of space at O'Hare could be considered substantially the same as the Airport Use Agreement with relation to the payment of landing fees, Air Wisconsin has none of the three alternative certificates required under Section 14.05 and, therefore, is not an "Airline Party" pursuant to the definition.

It is, therefore, our opinion, based upon the information presented to us, that since Air Wisconsin, Inc., is not an Airline Party under Section 14.05, it cannot participate in the O'Hare Fueling System pursuant to Section 1.04 and, although fuel servicing at O'Hare may leave a great deal to be desired insofar as Air Wisconsin is concerned, it will be impossible and illegal to accede to its request until such time as it meets the lease definition of Airline Party.

If we can be of any further service to you in this matter, please advise.

LESSEE'S RESPONSIBILITY FOR BREACH OF AIRPORT SECURITY

(J. T. B., *Federal Aviation Administration—*
R. L. H.—January 20, 1976)

Your letter of December 31, 1975, regarding the above-cited matter, addressed to Mr. J. P. Dunne, Acting Commissioner of Aviation, was forwarded to the undersigned for review, discussion, and reply.

After our discussion in my office a week or so ago, I took the liberty of discussing this matter with the aviation people to the end that it is our opinion that there is no liability on the part of the City of Chicago for the alleged breach of security at Chicago Midway Airport.

Since it appears that your agency and other federal agencies are the tenants of the south terminal building at Midway where access to the operations area was allegedly had by the individual found on the runway and since the federal government provides its own security personnel at leased premises (such as the tower at O'Hare), it is our position that had your security personnel been doing their proper job this breach could not have occurred. The City of Chicago cannot be responsible for errors in the federal government's security system.

We, therefore, on behalf of the Department of Aviation, decline to accept liability for the aforesaid breach of security at Midway and respectfully request that you close your file on said alleged violation and advise us to that effect.

PENALTY FOR VIOLATION—TERMINAL REGULATIONS

*(Commissioner, Department of Aviation—
R. F. F.—February 27, 1976)*

This is in answer to your inquiry concerning methods of enforcing rules and regulations of the department. You have recently proposed rules governing the use of the public areas of the airport terminal buildings pursuant to Chapter 82, Section 8.2-2 and Chapter 37, Section 37-13 of the Municipal Code of Chicago, and inquire how they may be enforced.

When these rules are put into effect, all persons using the airport facilities must obey them. No person need be permitted to remain on the premises if he disobeys the rules. Therefore, after being warned that his behavior violates the rules, an offender may be arrested for trespass. The state or city trespass laws are found in Ill. Rev. Stat. 1973, Ch. 38, § 21-3 and Chapter 193, Section 193-1.4(b) of the Municipal Code. Moreover, the police are authorized to direct persons to comply with such airport rules. Failure to follow an officer's lawful order is a violation of Chapter 11, Section 11-33 of the Municipal Code.

Of course disobedience to the rules accompanied by other unlawful behavior, such as disorderly conduct, theft or battery, may be punished as such.

PENALTY—BREACH OF AIRPORT SECURITY SYSTEM

*(J. T. B., Federal Aviation Administration—
R. L. H.—March 5, 1976)*

Your letter of December 31, 1975, regarding the above-cited matter, addressed to Mr. J. P. Dunne, Acting Commissioner of Aviation, was forwarded to the undersigned for review, discussion, and reply.

Our discussion in my office some time ago and my further discussion with the aviation people lead us to the uncontroverted fact that there was, apparently, a breach in the O'Hare security system since, without such breach, it would be impossible for an unauthorized individual to make his way to the operations area outside of gate E-11 in an automobile.

It is our studied opinion that although it does appear that a violation of the security regulations occurred, it was a technical violation and no one yet has been able to determine at what location the breach of security occurred. For this reason, we believe that the assessment of the civil penalty of \$1,000.00 referred to in your letter aforesaid would be unconscionable.

Although we did discuss the figure of \$250.00 as a compromise and penalty to be assessed in this matter, we would suggest that you again review your file with a view toward your closing your file without assessment of such penalty. Since there is no question that this mere technical violation was harmless and that no specific area of breach of security can be determined, it is our belief that a proper and equitable resolution would consist of a letter of warning rather than an assessment of penalty.

Your attention is directed to the language of Section 901 (a)(2) of the Federal Aviation Act of 1958, as amended, which provides for the compromise of

civil penalties for certain violations. We note that no minimum penalty is set forth therein such that a compromise can be properly effected without assessment of penalty.

MEIGS FIELD LEASE AGREEMENT WITH F.A.A.

*(Commissioner of Aviation—M. J. H.—
March 22, 1976)*

We have reviewed your letter of March 12, 1976, with attachments thereto, in the above-entitled matter and, it is our opinion that a lease agreement can be entered into with the United States Government (Federal Aviation Administration) in the form similar to those for the Midway and O'Hare towers.

The only basic difference in the proposed lease at Meigs would be that FAA would repair, remodel and reconstruct the existing tower facility rather than construct a new tower facility. The provision for title to be in the government until expiration of the lease, a requirement of FAA to allow them to do the work necessary at their expense, poses no problem.

When this matter was first discussed, it was suggested that title to the tower facility was to vest in the government, and it appeared that this could pose a problem. Since it now appears that title will vest *only* during the pendency of the lease of the facility, the situations at both Midway and O'Hare, the problem no longer exists.

We suggest that a draft copy of a proposed lease be forwarded to us for review at your earliest convenience so that an ordinance authorizing execution thereof can be processed at an early date since it appears that the repairs contemplated by FAA are urgently needed.

HANGAR MAINTENANCE— TENANT OBLIGATION

*(Commissioner of Aviation—R. L. H.—
May 24, 1976)*

Your letter of April 6, 1976, requests our opinion as to whether the five items listed on the 1975 O'Hare Physical Conditions Report of Tenant Maintained Facilities are to be considered building modifications, and therefore a city obligation, or maintenance items, and thus an airline obligation.

The problem posed was raised specifically by North Central Airlines in their letter to you dated March 3, 1976, and our response will be geared specifically to that tenant, although we imagine the opinion will hold as to all other tenants in a similar position.

Section 4.01 of the Hangar and Hangar Site Lease provides for city construction of a hangar facility for the airline, and pursuant thereto, a hangar was built for North Central under Contract RB-17 in 1961 or 1962. We also understand that an addition to said building was built in 1965.

Section 4.02 of said Hangar and Hangar Site Lease provides, in the second paragraph thereof, as follows:

"Notwithstanding the foregoing, airline shall, after completion of the construction provided for by Section 4.01 hereof, keep the demised premises and all construction and installations made thereon in a sanitary and slightly condition, and *shall comply with all health and safety requirements applicable thereto.*" (emphasis added)

Our discussions with members of your Department indicate that the items listed in the North Central letter of March 3, 1976, and identified as Mechanical Items Nos. 2.1 through 2.5, are all items dealing with safety and are either absolutely required by the Municipal Code of Chicago or strongly recommended by the insurance carrier as safety requirements.

It is our opinion, therefore, that these items fall within the language of Section 4.02 of the Hangar and Hangar Site Lease quoted above, and as such, are obligations of the tenant.

If we can be of any further assistance to you in this matter, please advise.

CIVIL RIGHTS ACT OF CHICAGO

*(Director, Commission on Human Relations—
M. L. P.—June 10, 1976)*

Your letter dated May 7, 1976, addressed to Mr. William Quinlan, Corporation Counsel, for an opinion as to whether Chapter 199A, Civil Rights Ordinances of the City of Chicago is applicable to the Bahama Casino Kapers, located at 35 East Wacker Drive, Chicago, Illinois, refusing women the right to participate in free air fare, meals and drinks in exchange for an intent to gamble at the El Casino in Freeport has been received.

The Bahama Casino Kapers operates at 35 East Wacker Drive, Chicago, Illinois, Chicago Telephone No. 236-2017. The agreements with persons are made in the City of Chicago and transportation furnished from Chicago O'Hare International Airport.

Chapter 199A, Section 1 states: "All persons within the jurisdiction of the City of Chicago shall be entitled to the full and equal enjoyment of the accommodation, advantages, facilities and privileges of inns, restaurants, eating houses, soda fountains, soft drink parlors, taverns, . . . aeroplanes . . . and all of the places of public accommodations . . . subject only to the conditions and limitations established by laws and applicable alike to all citizens. . . ."

Section 2 of said Act provides that any of the enumerated establishments or transportation facilities wherein any of the provisions of Section 1 of this ordinance are violated are declared to be a public nuisance. Section 2 further provides that the owners agents or operators shall be deemed guilty of maintaining a public nuisance.

Section 3 provides that any person violating any provisions of this ordinance shall be fined not more than two hundred dollars for each offense, and a separate and distinct offense shall be considered as having been committed for each and every day on which any person shall be guilty of any such violation.

Since the Bahama Casino Kapers are the agents or operators for these junkets, entering into the contracts or agreements in the City of Chicago and providing for the air transportation from Chicago O'Hare International Airport, they must grant full and equal enjoyment to all persons within the jurisdiction of the City of Chicago and refusal to permit women to participate,

merely for the reason that they are women and for no other reason, is a violation of the Civil Rights Act, Chapter 199A of the Municipal Code of the City of Chicago.

ENACTMENT OF AIRPORT RULES AND REGULATIONS

*(Acting Commissioner, Department of Aviation—
R. F. F.—July 23, 1976)*

This is in answer to your letter of July 19, 1976 inquiring whether future airport rules and regulations should be put into effect as regulations issued by your office or as ordinances enacted by the City Council.

As we stated in our letter to you of February 27, 1976 regarding the implementation of the department's regulations concerning conduct of persons using the airports, you may issue rules governing the use of aviation facilities pursuant to Chapter 8.2, Section 8.2-2 of Chapter 37, Section 37-13 of the Municipal Code. However, the Department of Aviation is not authorized to incorporate penalty provisions in such regulations. Sanctions may only be enacted by the City Council. Nevertheless, departmental rules may be enforced, and persons convicted of violating them may be punished. Three alternatives may be used to effect enforcement.

1. Enforcement of the Department of Aviation rules may be enforced by use of the trespass laws or the ordinance requiring persons to follow lawful orders of police. This method is described in our letter of February 27, 1976, a copy of which is attached. Since this method does not depend upon any subsequent City Council action, the departmental rules, once issued, are effective immediately and without any further action. In addition, this method permits the greatest flexibility, since the department may amend the rules as necessary without further action.
2. The City Council may enact an ordinance expressly imposing sanctions upon persons violating rules issued by the Department of Aviation.
3. The City Council may enact as an ordinance all the rules promulgated by the Department of Aviation, with appropriate penalties for their violation.

The first alternative would appear to be the most attractive for the present, since it permits such rules to become effective and enforceable immediately upon their issuance, and necessary amendments may be made without unnecessary delay.

CONSTITUTIONAL CHALLENGE OF LEAFLETTING REGULATIONS

(J. D. R.—D. P.—July 30, 1976)

Commissioner Joseph P. Dunne of the Department of Aviation of the City of Chicago forwarded to me your letter of June 28, 1976, concerning our recent airport terminal regulations regarding leafletters. Thank you for your kind words about the regulations.

At present one group, the International Society for Krishna Consciousness,

is challenging all aspects of the regulations on constitutional grounds in the United States District Court (*I.S.K.O.N. v. Rochford*, 76 C 1615). That suit is presently at the motion stage and therefore has not been resolved on the merits. However, at least one aspect of regulations have received a preliminary ruling by the federal court.

Prior to the July Fourth weekend, the Department of Aviation issued an order pursuant to Article IV of the regulations prohibiting leafletting July 2-5 on account of the heavy use of terminal buildings anticipated preceding, during and following the holiday. The I.S.K.O.N. plaintiffs sought an emergency temporary restraining order to prevent the department's enforcement of its order. After a hearing, Judge Leighton of the District Court denied I.S.K.O.N.'s motion. I.S.K.O.N. took an emergency appeal to the United States Court of Appeals for the Seventh Circuit. That Court denied the appeal, because the court stated, I.S.K.O.N. could not show the group had a substantial probability of success on the merits.

A final ruling as to the validity of the regulations is expected in the fall.

INCINERATION OF INTERNATIONAL GARBAGE

*(Acting Commissioner, Department of Streets and
Sanitation—H. F. W.—January 7, 1977)*

We wish to acknowledge receipt of your letter of December 23, 1976 in which you request advice and direction regarding the request of Garden City Disposal to use the Northwest Incinerator to incinerate the foreign garbage and debris collected at O'Hare International Airport.

You attached a letter from Garden City Disposal and a United States Department of Agriculture Procedure for disposing of international garbage to your letter, which we herewith return to you. Under federal regulations all international garbage and debris must be disposed of by incineration.

Garden City Disposal has been approved by the United States Department of Agriculture for pick up of all foreign garbage and debris accumulated at O'Hare International Airport. Said company has a contract with the Department of Aviation to pick up the foreign garbage and debris collected at O'Hare Field and to transport said material to an incinerator for disposal. In effect, Garden City Disposal is merely hauling city garbage from O'Hare International Airport to the Northwest Incinerator.

It therefore follows that Garden City Disposal may use the Northwest Incinerator for disposal of the foreign garbage and debris accumulated by the Department of Aviation at O'Hare International Airport.

In order to hold the City of Chicago harmless from claims for injury to the employees of Garden City Disposal or damage to equipment of Garden City Disposal, you should request Garden City Disposal to furnish your department with a disclaimer for insurance purposes. In addition you should request Garden City Disposal to have the City of Chicago added as a named insured on their insurance policies to protect the city from claims for personal injuries to their employees and to their equipment when using the city owned Northwest Incinerator.

We trust this will assist you in finalizing this matter.

OPINION OF TITLE

*(Commissioner, Department of Aviation—
R. L. H.—March 2, 1977)*

In connection with the above project application and pursuant to your request, we submit the following opinion as to the right and interest of the City to use and occupy as a municipal airport a portion of the property described as Sections 25, 35 and 36, Township 41 North, Range 11; Sections 30, 31 and 32, Township 41 North, Range 12; Sections 4, 5, 6, 7, 8, 9, 16, 17, 18 and 20, Township 40 North, Range 12, all being East of the Third Principal Meridian in Cook County, Illinois; and Sections 1, 12 and 13, Township 40 North, Range 11, East of the Third Principal Meridian in DuPage County, Illinois, otherwise known as Chicago-O'Hare International Airport.

Be advised that except for additions as therein noted, there have been no changes, modification or alterations in prior Opinions of Title rendered on the subject premises under dates of May 2, 1957; May 20, 1957; June 6, 1958; August 1, 1958; January 20, 1959; May 20, 1959; June 11, 1959; June 23, 1960; June 27, 1960 February 1, 1961; June 1, 1961; March 2, 1962; November 9, 1962; October 3, 1963; March 15, 1967; May 29, 1968; April 30, 1975; November 17, 1975; February 4, 1976; and June 22, 1976, said opinions being hereby affirmed.

All of the real estate comprising said airport is owned by the City of Chicago in fee simple title, same having been acquired by purchasing a Warranty Deed or by a Judgment Order. Each parcel of land as acquired has a title report, as well as a Guaranty Policy issued thereon by the Chicago Title and Trust Company finding and guaranteeing title in the City of Chicago.

In addition, the City of Chicago has purchased a navigation easement on the over portions of property located in Sections 19 and 20, Township 40 North, Range 12, East of the Third Principal Meridian in Cook County, Illinois from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company for the sum of Nine Hundred Thousand (\$900,000.00) Dollars. The Grant of Easement to the City of Chicago recorded as Document No. 23 232 784 in the Office of the Recorder of Deeds, Cook County, Illinois on September 14, 1975, was executed by the Grantor thereof pursuant to an Agreement between said Railroad and the City of Chicago dated May 8, 1975, with approval thereof by Ordinance of the City Council of the City of Chicago on that date (C.J.P. pp. 118-123).

The legal description and plot of the property contained in said Grant of Easement can be found as Exhibits "A" and "B" respectively to the Grant of Easement, Agreement and Ordinance referred to hereinabove.

OPPOSITION TO CONCORDE
SERVICE

S. B. R.—R. L. H.—October 28, 1977)

Your letter of October 3, 1977 relative to Concorde service to Chicago has been assigned to the undersigned for reply.

The City of Chicago, owner and operator of Chicago O'Hare International Airport, through its Mayor, stated its opposition to Concorde service at Chicago immediately after President Carter's announcement.

It is our understanding that the non-stop capability of the Concorde cannot extend to Chicago and that one stop service with subsonic flight into Chicago would be uneconomical to operate such that the prospects for Concorde service to Chicago in the near future, are quite remote.

It is our further understanding that the neighbors of Chicago O'Hare International Airport consisting of a large number of cities, villages and towns are not only adamantly opposed to additional noise emanating from the Airport, but are also striving for a reduction of the current levels. We assume, then, that all of these municipalities would also be aligned in opposition to Concorde service.

In addition, many members of the Illinois delegation in the United States Congress have also voiced opposition to Concorde flights into Chicago.

We are sorry not to be able to answer your questions with more specificity but trust that the foregoing will serve your needs.

CHARGE FOR USE OF FEDERAL INSPECTION AREA

*(Commissioner of Aviation—R. L. H.—
November 15, 1977)*

Your recent letter requested an opinion as to the method of charging Northwest Airlines, Inc. for their use of the federal inspection areas for deplaning passengers on the Tokyo to Chicago flights.

Your letter indicates that Northwest is using terminal space in the International Building as a subtenant of Continental Airlines on a Continental lease for *domestic* terminal facilities, said lease not having contemplated use for foreign air service, and, therefore, there is no provision for payment for use of space and/or services related to foreign carriage.

The suggestion in your letter to apply the ramp charge as set forth in Section 37-11(d)(2) of the Municipal Code would not be proper since that section provides the charge to "... *other than a tenant* or permittee of terminal building space in the adjacent public passenger terminal building" and Northwest is in fact a *tenant* by virtue of their sublease from Continental (emphasis added).

We have researched the situation and discussed same with members of your staff and it is our opinion that a direct lease agreement should be entered into with Northwest for Joint Use Space in the International Terminal Building since the standard lease therefor does refer to the payment for joint use of space for the services needed in deplaning passengers in foreign carriage.

CONSTRUCTION OF HELIPORT PROXIMATE TO MIDWAY

*(Director, Division of Aeronautics, Illinois Department of
Transportation—R. L. H.—April 28, 1978)*

Your Notice in the above entitled matter dated April 17, 1978, has been duly received and noted.

In behalf of the City of Chicago, your attention is directed to the following facts:

1) the proposed location is approximately one and one-quarter miles south of Chicago-Midway Airport;

2) pursuant to C.A.B. Docket 30277, Chicago-Midway Airport will shortly be handling a full schedule of commercial flights.

In view of the foregoing, it would seem to be in the best interests of the Commercial Air traveler and his safety that a heliport *NOT* be located in such close proximity to Midway Airport.

In the event you do not consider the foregoing sufficient reason to deny the approval requested, we must be on record as insisting that for the sake of safety, two approach zones are required and that no waiver of par. 56 be granted.

OBJECTION TO LEASE PROVISIONS

*(Commissioner of Aviation—R. L. H.—
June 15, 1978)*

Your recent letter, with attachments, in the above entitled matter requests our opinion as to the objections raised by American Airlines and forwards, by way of support documentation, an executed copy of a lease agreement between the City and American Airlines for Terminal Basement Space.

We have reviewed the comments submitted by American Airlines and find that they are now objecting to various terms and conditions to which they did not object in the aforesaid Basement space lease executed in 1973.

It is therefore our opinion that American Airlines be advised that since they have heretofore accepted these terms and conditions, no objections thereto will be now allowed.

If they choose not to execute the lease, they would have to vacate the premises covered in the said lease and restore the property to its original condition.

AIRPORT TERMINAL MAINTENANCE OBLIGATIONS

*(Commissioner of Aviation—R. L. H.—
August 17, 1978)*

The first portion of your letter of recent date in the above entitled matter requests our opinion specifically as to whether it is the City's or the airlines' responsibility to pay for the replacement of ceilings and lighting fixtures therein in leased baggage areas on the lower level of the terminal buildings.

A discussion with members of your staff indicates that the City has determined to remove abandoned conveyor systems from the areas above the ceilings of the lower level of the terminal buildings and, in the replacement of the electrical fixtures contained therein, to upgrade the lighting in said ceilings to increase the foot candle power of light emanating therefrom. It is our understanding that federal funding is available for this project in the public areas but that no such funding is available in the areas that are under lease.

We further understand that this project is deemed necessary because in

many, but not all, areas of the lower level, the ceilings have become unsightly due to the necessity in the past to dislodge baggage from the now abandoned conveyor systems above said ceilings.

It appears that it is your position that each airline leasing baggage areas on the lower level should be responsible for the replacement of the ceilings and lighting therein in their leased areas or in the alternative, pay the cost therefor to the City who will contract for the performance of the entire project. It appears from the letter from United Airlines (attached to your letter) that the airlines have no intention of individually paying for such work on the basis that it is the City's responsibility.

Our review of this matter reveals that the replacement of *all* of the ceilings and lighting is necessary only for reasons of uniformity, both esthetically and for the upgrading of all of the lighting. The ceilings in some of the airline leased areas which do not have conveyor systems above them are in good condition and would not be considered for replacement but for these reasons of uniformity and upgrading of the lighting. It would seem inequitable to force some airlines to make capital expenditures from their corporate budgets when, for these reasons, no need for the expenditure could be shown.

The first paragraph of Section 6.01 of the Terminal Facilities Lease with the airlines clearly provides that it is the City's obligation to maintain and keep in good condition the Terminal Buildings and any and all additions, improvements, etc. provided by the City. In addition, it is the City's obligation to keep said buildings except for Airlines Leased Space, in a sanitary and slightly condition. Section 5.01 of said Lease provides that the airlines are obligated to maintain in good condition and repair all improvements and additions installed by them and, in addition to keep their leased areas in a sanitary and slightly condition.

We believe that it would be stretching the intent of the foregoing language to take the position that replacement of the ceilings in the airlines leased baggage areas below abandoned conveyor systems is an airline expense because the said ceilings are "unsightly." Further, the aforesaid language would clearly be inapplicable in those areas where the ceilings were, in fact, not "unsightly."

In view of all of the foregoing, it would be our opinion that if a uniform replacement of ceilings with upgrading of lighting is desired by the City in the lower level of the terminal buildings, it is strictly the City's responsibility. The matching share for the federally funded portion of the project and the funds for the work in the airline leased areas can both come from airport revenues such that the airlines will still be paying for the project although not on an individual pro rata basis.

The City, as Landlord, leased space in the terminal buildings to the airlines and said space, when originally leased, included ceilings and electrical fixtures for lighting contained therein. Replacement of the ceilings and upgrading of the lighting constitutes an improvement of the premises and, if the landlord (City) decides to so do, it is the Landlord's responsibility to pay the cost therefor.

The second portion of your letter requests our opinion as to whether the City has the legal right to require tenants to adhere to the O'Hare Standards on those items of tenant maintenance and repair which do not require prior approval of plans and specifications by the City's Departments of Aviation and Public Works.

We have reviewed sample copies of the following types of O'Hare leases:

- a) Hangar and Hangar Site Lease
- b) Joint Cargo Building and Site Lease
- c) Cargo Building and Site Lease (Airline)
- d) Cargo Building and Site Lease (Non-airline)
- e) Flight Kitchen Site Lease

and although each of said leases require tenants to maintain the premises in good condition and repair, we can find no specific language in any of the said leases that require any conformance to construction standards other than in those instances where pre-approval of plans and specifications by the City is required.

If it has not already been done, we believe, however, that since all of the leases provide for tenants to observe and obey rules and regulations promulgated by the City, the O'Hare Standards referred to in your letter can be added to the O'Hare Airport Rules and Regulations currently operative and, after due notice to the tenants, all tenant maintenance and repair would have to conform to these standards.

Although tenants under the Terminal Facilities Lease are only responsible to maintain those additions or alterations constructed by them, the Rules and Regulations Article of their leases, when implemented as suggested hereinabove, would require conformance to the O'Hare Standards in the maintenance and repair of such additions and/or improvements in the Terminal Buildings.

UNTIMELY NOTICE OF PROPOSED CONSTRUCTION

*(Chief, Airspace and Procedures Branch, Federal Aviation
Administration—R. L. H.—December 18, 1978)*

Attached herewith is a letter from the City of Chicago Department of Planning, City and Community Development, which clearly delineates the City of Chicago's objection to the proposed construction herein.

Preview of your files should indicate that our original objection to the Schiller Park Water Tower was voiced immediately upon receipt of the Notice in case 71-CH1-101-OE, but nothing could be done there since the tower was fully constructed and operable prior to any notice to you of the "proposed" construction.

We are suffering with an airspace hazard and do not feel that compounding this hazard by the addition of a 12 foot antenna will serve any purpose.

We again would like to reiterate comments made in a letter dated June 7, 1978 in 78 GL 580-OE wherein we question the propriety of your office circulating Notices of Proposed Construction *AFTER* approval on the face of an Agreement made about 20 years ago by and between counsel for the City and FAA to the effect that no approvals would be given to proposed construction near Chicago's airports until the City was circularized with the Notice and given ten days to respond.

We understand that personnel have changed such that you may be unaware of the above cited agreement. We believe, however, that since this agreement has been mentioned on a number of occasions, it is time it is honored rather than ignored.

DE-CONTROL OF RENT-A-CAR CHARGES

*(Commissioner of Aviation—R. L. H.—
April 18, 1979)*

Your letter of March 9, 1979 in the above entitled matter requests our advice as to the position to be taken regarding the Federal Trade Commission's demand that the "control" language be deleted from our rent-a-car agreements.

In discussion with Mr. Thomas McNerney, FTC Staff Attorney in Washington, it appears that their objections relate to the language contained in Article VII, Paragraph A of the rent-a-car agreements wherein rates and charges require written approval from the Commissioner of Aviation and said charges must be comparable to those in the City of Chicago.

The FTC position is very simple. The City, by maintaining control over the rates charged by the rent-a-car companies through the approval requirement and by requiring conformity or comparability in rates to elsewhere in Chicago, is committing an act which is a violation of the anti-trust laws and the Federal Trade Commission Regulations. He understands our position that the control language is present solely to protect the general public from being taken advantage of and, further, that we have never exercised our rights of approval of rates and charges. He states, however, that where competition is rampant, as in the case of the rent-a-cars, the general public will be adequately protected by the natural operation of free and open competition between the various companies.

We also discussed this matter with an attorney in the office of Sam Mumma, Esq., the AOCI Consultant on anti-trust matters and we were advised that all of the major airports and almost all of the other airports have agreed to accept the FTC mandate on the basis that with competition being present, the public does stand a good chance of getting a fair and proper rate from the rent-a-car operators and it would be futile to fight the FTC on this issue. The members of AOCI, however, are almost united in the premise that any attempt to eliminate the control language from agreements for monopoly concessions (such as newsstand, drug store, gift shop, restaurant and beverage service, etc.) would be fought down to the wire since it cannot be said in those instances that competition will protect the public. In those instances of monopoly services, it is the agreement with the airport operator alone which serves to protect the public.

In view of the foregoing, it is our opinion that the City's position be the same as all of the other major airports and that you advise the FTC as soon as possible, with copies of your letter to all of the tenant rent-a-car companies, that the language of the objectionable paragraph VII-A will be immediately inoperative but for the requirement that schedules of all rates and charges and any and all changes thereto be filed with the Commissioner of Aviation and that the said objectionable language would be eliminated from renewal agreements at the expiration of the current term.

We might add that prompt action appears to be necessary since the FTC is in the process of obtaining administrative approval through the various levels of the agency for the filing of a Complaint against the City of Chicago for anti-trust violations.

LEASE NEGOTIATIONS— PARKING LOT

*(Commissioner of Aviation—R. L. H.—
June 21, 1979)*

Your recent letter, with attachments, advises us that the Department of the Army has offered to extend the City's lease of Remote Parking Lot "D" for an additional two years. Their offer, however, increases the rental from an annual sum of \$14,000.00 to \$15,300.00 and, in addition, imposes additional rental amounting to 5% of the gross receipts from said Lot "D."

Your letter requests our opinion as to whether this agreement with a percentage rental in addition to a flat rental would be in violation of the O'Hare Revenue Ordinance.

Our review of the Revenue Bond Ordinance does not reveal any sections that would be violated by the aforesaid percentage rental. There may be some difficulty in providing an Operation and Maintenance fund budget item for the rental of said lot since part of said rental would be on the basis of 5% of an estimated gross revenue figure but there is no question that the rental arrangement proposed is legal under the Bond Ordinance.

Our review of the proposed increase in rent as set forth in your letter raises an important point which may properly be raised with the Department of the Army and especially since it is our understanding that no negotiations were had—the Army unilaterally advised what the rent for the next two years would be, take it or leave it.

It seems that the increase in the basic rental of \$1,300.00 per year is almost a 10% increase. Adding to this a more than doubling of the basic rental with the estimated percentage rental figure gives us an increase of over 115% which appears unquestionably to be greatly in excess of the President's Anti-Inflation Guidelines. It appears that there may be room for some negotiations at this time.

INTERIM CHANGE OF LANDING FEES

*(Commissioner of Aviation—R. L. H.—
August 10, 1979)*

Your letter and attachments of recent date requests our opinion as to whether the landing fees at Chicago-O'Hare International Airport can be renegotiated and changed during a calendar half-year period.

Section 2.02 of the O'Hare Airport Use Agreement provides quite clearly that the Flight Fee for fee landings at O'Hare is to be determined for six month periods commencing on January 1st and July 1st of each year, said determination to be based upon estimates of revenue needed and fee landings to be made in said calendar six-month periods.

We can find nothing contained in any other sections of the Use Agreement that would allow any renegotiation or re-determination of landing fees at any time other than that set forth in the aforesaid Section 2.02.

It could be said that since the Airport Use Agreement is an agreement by and between the airlines and the City, the parties have full authority to unaniously agree to renegotiate the landing fee at any time they wish.

Since the Airport Use Agreements executed by all of the Airlines were deposited as security for the Revenue Bonds, it would appear that the only method of changing said Agreement would be by formal amendment thereof, said amendment being first approved by Bond Counsel on behalf of the bondholders and then authorized by the City Council. By the time these formalities were finalized, it would be time for the regular semi-annual review of the landing fees.

It is our opinion, then, in answer to your request, that there being nothing contained in the Airport Use Agreement authorizing adjustment of the landing fees other than as of January 1 and July 1, no interim adjustment can be legally made. An adjustment made as of January 1, or July 1, remains in effect for a full six-month period.

DISPUTE OVER TITLE TO AIRCRAFT

*(Airport Manager, O'Hare Airport—R. L. H.—
September 7, 1979)*

Your letter of recent date forwards for our review a letter from the attorney for Jetliners, Inc., claiming that Jetliners, Inc., has title to the above cited aircraft pursuant to a Bill of Sale attached thereto.

Your letter and previous communications relative to this Aircraft advises that Redman Air, Inc., claims title to said aircraft and that they are in the process of repairing and refurbishing same with an avowed intention to fly it out of O'Hare in the near future.

Since there appeared to be a dispute over actual ownership of the said aircraft, we telephoned the FAA Aircraft Registration Office, in Oklahoma City, and are satisfied that Redman Air, Inc., is the true owner of the said vehicle at least as of June 4, 1979.

The Federal Aviation Administration advised us over the telephone that the said aircraft was imported from Mexico in 1973, and provided the following chain of title information to date:

1. Bill of Sale dated 5/3/73 from Mejicana de Aviacion S.A. to Westernair of Albuquerque, Inc. filed with FAA on 6/27/73; Recorded as Document No. L080117 on 7/17/73.
2. Bill of Sale dated 9/2/76 from Westernair of Albuquerque, Inc. to Albuquerque Nat'l. Bank, filed with FAA on 12/13/76; Recorded as Document No. X 055290 on 12/30/76.
3. Bill of Sale dated 11/6/76 from Albuquerque National Bank to Onyx Aviation, Inc., filed with FAA on 12/13/76; Recorded as Document No. X 055291, on 12/30/76.
4. Bill of Sale dated 12/8/76 from Westernair of Albuquerque, Inc., to Jetlines, Inc., received by FAA on 2/17/77; *Not Recorded* since it appeared to FAA that Seller had lost any interest in the said aircraft by virtue of a

Bill of Sale on 9/2/76 and the Buyer in that transaction had then sold said aircraft on 11/6/76. (See Items 2 and 3 above.)

5. Affidavit of Disclaimer dated 5/18/79 from Westernair of Albuquerque, Inc., setting forth that it disclaims any interest in the Bill of Sale dated 12/8/76 since it did not own said vehicle on said date and the purported sale had never been consummated. Said affidavit filed with FAA on 6/1/79; Recorded as Document No. Y 01154 on 6/4/79.

6. Bill of Sale dated 11/4/77 from Onyx Aviation, Inc. to Commander Aviation, Inc., filed with FAA on 6/1/79; Recorded as Document No. Y 01155 on 6/4/79.

7. Bill of Sale dated 2/2/79 from Commander Aviation, Inc., to Custom Air, Ltd., Inc., filed with FAA on 6/1/79; Recorded as Document No. Y 01156 on 6/4/79.

8. Bill of Sale dated 2/2/79 from Custom Air, Ltd., Inc., to Redman Air, Inc., filed with FAA on 6/1/79; Recorded as Document No. Y 01157 on June 4, 1979.

It appears that the copy of the Bill of Sale submitted by the attorney for Jetliners, Inc., although undated, must be the Bill of Sale that was delivered to the FAA and referred to in Items 4 and 5 above.

As indicated heretofore, and pursuant to the foregoing information from FAA, it is our opinion that title to the said aircraft is in Redman Air, Inc., and that the purported Bill of Sale submitted by Jetliners, Inc., does in no way give them any claim to title.

It would be our suggestion that the attorney for Jetliners, Inc., be advised, in response to his July 24, 1979 letter to you, that the Corporation Counsel will not give permission for his client to move the said aircraft as indicated therein since his client has no apparent rights in the said aircraft, registered ownership therein being in Redman Air, Inc.

AIRPORT CONTRIBUTION BOOTH REGULATIONS

*(Commissioner, Department of Aviation—R. F. F.
—September 25, 1979)*

You recently sent for review proposed regulations to govern soliciting by religious groups at O'Hare airport.

One aspect of the proposed regulations raises an unresolved legal question. The proposal would limit the locations where donations of money might be received by religious solicitors. Although proselytizing could take place throughout the designated area, donations could be given and received only in three booths provided for such purposes.

Other airports have instituted such a contribution booth regulation. The regulations have been challenged in federal courts, and some courts have approved them and others have found them invalid. Now, as you know, a federal circuit court of appeal has upheld the Atlanta airport contribution booth regulation. *Iskin v. Eaves*, _____ F.2d _____ (No. 77-1284, 5th Cir. Aug. 30, 1979).

This decision, if unmodified, is a strong indication of the validity of the

booth concept. The opinion is not binding, however, on the courts in our own circuit. Moreover, the decision is subject to modification, either upon rehearing by the Fifth Circuit or upon certiorari by the United States Supreme Court. The case will be of greater persuasive authority when the questions of rehearing or Supreme Court review are settled.

For this reason, I suggest reserving decision on putting the regulations into effect until the *Eaves* case is indisputably final.

OBJECTION TO F.A.A. PROPOSED RUNWAY CONSTRUCTION

(*R. F., Federal Aviation Administration—R. L. H.*
—November 9, 1979)

The City of Chicago Department of Aviation, the operator of Chicago O'Hare International Airport, is in receipt of the above cited notice and has asked us to convey to you the objections to said proposed construction, to wit:

"We object to the construction due to the fact that the entire height of the addition could exceed the runway primary surface of the proposed new Runway 14L at O'Hare. The construction of this building would result in additional cost to the City of Chicago for the purchase of the land required to construct the new runway."

NEWSPAPER VENDING IN TERMINALS

(*Acting Commissioner of Aviation—R. F. F.*
—November 8, 1976)

We have received your letter transmitting two requests from Dow Jones & Company. The company seeks to place newspaper vending machines at various locations throughout the terminals at Chicago-O'Hare International Airport for the purpose of selling daily and weekly newspapers it publishes.

At present the three Chicago daily newspapers have placed vending machines throughout the terminals. There appears to be no ordinance or regulation governing the placement of such machines. In absence of such a regulation or ordinance, the company may not be prohibited from distributing its publications through vending machines. Moreover, the first amendment to the United States Constitution would not permit such a prohibition, although a regulation governing the location or size of vending machines may be permissible.

Accordingly, the company may place vending machines at the airport terminal buildings for the purpose of offering its publications for sale on a basis equivalent to other newspapers. If you feel that it has proposed to take up more space than is justified or that the proposed locations interfere with traffic, negotiations with the company concerning the placement of the machines may resolve the problems.

REGULATIONS GOVERNING SOLICITORS CONDUCT INVALID

*(Commissioner, Department of Aviation—R. F. F.
—February 4, 1977)*

Pursuant to a memorandum opinion written some time ago, Judge Leighton entered an order today in this case finding invalid the City of Chicago's airport regulations which govern solicitors' conduct. These regulations were put into effect March 29, 1976.

The order holds the regulations unconstitutional as written. It also enjoins the future enforcement of the regulations. Accordingly, effective following the entry of the order, these regulations must be considered no longer in effect and may no longer be enforced.

It should be noted, however, that the Chicago ordinances and state statutes governing conduct still remain in effect and may be enforced in the proper circumstances.

Section B. CONSTRUCTION

COST OF RELOCATION OF FACILITIES IN PUBLIC RIGHT-OF-WAY

*(Acting Commissioner, Department of Public
Works—H. S.—September 12, 1974)*

This is to acknowledge receipt of your request for an opinion with regard to the above captioned matter, as to whether the City has to provide certain services to maintain facilities of Northern Illinois Gas Company which are partly in the right-of-way in the sewer system to be constructed.

We also received copies of correspondence which you transmitted from the Northern Illinois Gas Company, and the reply to said company from the Acting Chief Engineer of the Department of Public Works.

After due study and consideration of the matter, we are pleased to advise you that we are in accord with your position, i.e., that the City is not obliged to pay the cost of the relocation of any facility of the Northern Illinois Gas Company. In support of our opinion we cite two of the outstanding cases on the subject: Ill. Sup. Rep. Vol. 413, p. 457 and Ill. Sup. Rep. Vol. 324, p. 618.

Peoples Gas Lt. Co. v. City of Chicago, (Vol. 413, p. 457) which holds:

5. SAME—when requiring utility to change its subsurface construction at its own expense does not impair constitutional rights.

Requiring a public utility to change its subsurface construction at its own expense in order to permit a subway for transportation to be constructed under the streets does not impair any contract rights of the utility company under its franchise nor constitute a taking of its property without just compensation.

The People v. Chicago City Ry. Co. (Vol. 324, p. 618), which holds:

3. SAME—city may compel street railway company to re-locate its tracks in interest of public safety—eminent domain.

As street railways occupy public streets subject to the use of such streets by the public and subject to such burdens as may be made necessary by reason of the improvement of the streets in the interest of public safety and convenience, a city may compel a railway company to relocate its tracks in conformity with the widening of a street by the city in the interest of public safety; and such re-location of the tracks may be compelled by the city without resort to the exercise of the power of eminent domain."

CITY PERSONAL PERFORMANCE BOND

*(Deputy Chief, Environmental Control Division—
H. F. W.—April 23, 1976)*

Confirming our recent conversations at the various Pollution Control Board hearings pertaining to the cases pending before the Pollution Control Board, you requested the city to furnish you with our position in relation to the City of Chicago being required to post a personal performance bond in the amount of the dollar value of the uncompleted construction as a part of the order to be entered by the Pollution Control Board in the various incinerator and other pending cases.

The City of Chicago is a self-insurer and, as such, does not purchase public liability or other types of insurance policies. Even in cases where the city appeals from a judgment order for money damages, the city is not required to post an appeal bond.

In each of the proposed settlement agreements which you submitted to our office, you have included a paragraph in the order portion of said agreements which would require the City of Chicago to post a personal performance bond with the Pollution Control Board in the dollar amount of the uncompleted construction in each specific case. In view of the fact that the city is a self-insurer, we request that you confer with your clients, the Environmental Protection Agency, and reconsider your request to include a requirement for a performance bond as part of any proposed settlement agreement.

We are anxious to finalize the settlement of the various cases pending before the Pollution Control Board and should you have any questions, please feel free to call the undersigned.

NAVY PIER SOLAR ENERGY DEMONSTRATION PROJECT

*(Commissioner of Public Works—R. L. H.—
June 8, 1976)*

Under cover letter of February 27, 1976, you forwarded for our review a "Memorandum of Understanding" prepared by the General Electric Company and a "Proposed Draft of Agreement" as revised by your staff relating to the above-cited project.

Our review of these documents revealed that in addition to a design phase, it was contemplated that General Electric Company would do the necessary construction work to install a solar energy system at Navy Pier with the City agreeing to make the facility available therefor.

A problem arose thereupon since the City of Chicago no longer is the owner of Navy Pier, title thereto having been transferred to the Public Building Commission, and as the tenant of Navy Pier from PBC, it is questionable whether the City alone may authorize construction in the nature of capital improvements at said site.

Under memorandum of May 18, 1976, a revised "Memorandum of Understanding," dated April 12, 1976, was submitted for review and said review reveals that this agreement relates solely to the design phase of the project with no reference to installation of equipment by General Electric.

There is also the question as to whether the Commissioner of Public Works can execute this agreement without authority from the City Council.

After review of all of the foregoing, it is our opinion that the Commissioner of Public Works may execute the Memorandum of Understanding dated April 12, 1976, in behalf of the City, said agreement referring to utilization of DPW staff personnel in the design phase of this project.

It is our further opinion that in the event this project goes beyond the design phase, approval from the Public Building Commission would be required before any construction could commence.

CONSTRUCTION OF FIRE DEPARTMENT FACILITY

*(Commissioner, Department of Public Works—
R. L. H.—December 16, 1977)*

Your recent letter in the above entitled matter advises that the Fire Department, the Department of Public Works and the Illinois Central are in total agreement that a Fire Department Facility pursuant to Division III, Section 12d of the aforesaid Amendatory Ordinance (CJP 9/17/69 p. 6129) will be built in space less in area than set forth as minimum size in said Ordinance.

Your letter then requests our opinion as to whether this reduction in area can be simply accomplished by agreement of the parties or whether an amendment to the said Ordinance must be approved by the City Council to authorize said agreement.

Our review of the Amendatory Lake Front Ordinance aforesaid reveals the presence of Division VI, Section 25d which provides as follows:

"d. *Changes and Alterations* Details of plans for the work herein provided may be changed or altered with the mutual consent and approval of the Commissioner of Public Works of the City of Chicago and the Illinois Central Railroad Company, it being the intent herein that the standards and guidelines for the construction of public improvements specified in this Amendatory Ordinance be considered and followed as closely as is practically possible. . . ." (C.J.P., 9/17/69, p. 6134).

It is our opinion that subject only to a determination of the Chicago Fire Department that the reduced area facility will more than adequately serve the present and future needs contemplated under the Amendatory Ordinance of 1969 for fire protection, Section 25d properly authorizes the Commissioner of Public Works to enter into an agreement with the Illinois Central Railroad Company to change and alter the plans for the said Fire Department facility provided for in Section 12d with the extent of said change and alteration encompassing and including a reduction in the square footage of said facility.

PROFESSIONAL SERVICE CONTRACT— CONFLICT OF INTEREST

*(Commissioner Department of Public Works—D. P.—
May 19, 1978)*

Your recent letter to this office requests an opinion concerning questions directed to you by the regional director of the Urban Mass Transit Administration (UMTA). The director's letter points out that your department wishes to award a contract for professional services to Murphy Engineering Inc. in the construction of a transit extension to Chicago-O'Hare International Airport. Both Murphy Engineering Inc. and the Chicago Transit Authority, it is noted, employ James J. McDonough. The regional director's letter asks whether this relationship "could give rise to any possible violations of state or local laws or procedures."

Illinois law with respect to conflict of interest prohibits any elected or appointed officer from having an interest "in any contract for the performance of any work in the making or letting of which such officer may be called upon to act or vote." Ill. Rev. Stat. 1977, Chap. 102, par. 3. Nor may such officer, under the same law, represent any corporation in "any application or bid for any contract or work in regard to which such officer may be called upon to vote."

Under the procedures surrounding the award of the contract here being considered, it is our understanding that the sole responsibility for the decision lies with the Commissioner of the Department of Public Works. It is true that the Chicago Transit Authority will operate the trains which will use the tunnel to be constructed. However, no authority over granting the contract or over design or construction is exercised by the Chicago Transit Authority, or its officers. It appears, then, pursuant to the law cited above, Mr. McDonough's position would not give rise to a violation.

Similarly, the Illinois Municipal Code of 1961 provides that "no municipal officer shall be interested, directly or indirectly, in any contract . . . of the municipality. . . ." (Ill. Rev. Stat. 1977, Chap. 24, par. 3-14-4). Here of course, the Chicago Transit Authority is a separate and independent municipal corporation created by the State of Illinois. Clearly, if the contract here in question were entered into by the Chicago Transit Authority there would be a question of conflict of interest; but the contracting party here is the City of Chicago, not the Chicago Transit Authority and, consequently, the statute is inapplicable.

The United States Office of Management and Budget (OMB) has issued Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments (42 Fed. Reg. No. 176; Attachment O—Circular No. A-102). Its requirements include, in part, the following:

"3(a) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees, or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

*** (b) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a man-

ner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade."

It would appear that, given the roles of the Department of Public Works and the Chicago Transit Authority, and the fact that Mr. McDonough's position with the Chicago Transit Authority, does not require that he pass upon or vote on the award of this contract, there is no such "organizational conflict of interest" that would, in our opinion, violate the Uniform Administrative Requirements.

We observe, however, that one of the contract provisions included by the Urban Mass Transit Administration in the contract requires the following language:

5. *Prohibited Interest.* "No member, officer, or employee of the Public Body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

This clause, if taken literally, would introduce a disturbing element. First, the exclusion of *any* employee of *any* "local public body," if that phrase is read to include municipal corporations other than a contracting party, would be unduly stringent where there is no possibility of a conflict of interest arising out of their official position. Because this reading of the language would lead to an illogical result, we conclude that it cannot have been intended. Therefore, we believe that the language "public body or . . . local public body" refers to any employee of the contracting party who, in his official capacity must pass on, or at the very least, influence, as a result of his office, the awarding of the contract.

This reading seems congruent with the Uniform Administrative Requirement referred to above. Any other reading of the contract provision sought by UMTA is considerably broader than the objective stated in the Uniform Administrative Requirements which include the following language, "no additional requirements shall be imposed by the Federal agency upon the grantee unless specifically required by Federal law or Executive orders."

Accordingly, it would be our opinion that Mr. McDonough's position with the Chicago Transit Authority provides no conflict of interest with respect to your awarding of a contract to Murphy Engineering Inc.

CLARIFICATION—CONFLICT OF INTEREST IN AWARD OF CONTRACT

(Commissioner, Dept. of Public Works—D. P.—
August 2, 1978)

Your letter of July 26, 1978 requests that we review four specific inquiries raised by the regional counsel for the Urban Mass Transit Administration (UMTA) in connection with an opinion written by this office May 19, 1978 concerned with conflict of interest under a professional services contract funded by UMTA.

The first inquiry concerns the impact of Illinois Revised Statutes, Ch. 24, par. 3-14-4, amended effective July 1, 1978. It now includes exceptions from

coverage which are not relevant here. The operative sentence remains the first, as it was prior to July 1. The language has been changed only slightly and the key text is that "no municipal officer shall have interest, directly or indirectly . . . in any contract . . . of the municipality. . . ." As we said in our opinion of May 19, assuming *arguendo* that Mr. McDonough is a municipal officer, he is an officer of the Chicago Transit Authority, a separate and independent municipal corporation created by the State of Illinois. The CTA is not a party to the contract under consideration and accordingly the statute is not applicable.

Next, he asks the relevance of Illinois Revised Statutes, Ch. 111 2/3, par. 319, which includes a provision which is the converse of that quoted above:

"No member of the Board or employee of the Authority shall have any private financial interest, profit or benefit in any contract, work, or business of the Authority. . . ."

We repeat, that the Authority is not a party to the contract under consideration, and therefore this provision has no relevance to the contract under consideration.

The next inquiry concerns the case of *Kruse v. Streamwood Utility Corporation*, 34 Ill. App.2d 100, 180 N.E. 2d 731 (1962), which involved the granting of a license for water and sewer services for the Village of Streamwood. The village trustees were all owners or employees of an engineering firm under contract with companies whose owners were the same individuals owning the company which was granted the water and sewer service license. The court observed that:

"The City officers would be more than human if they could make as fair and impartial a contract with a contractor employing them as they could with another party with whom they had no relationship by way of contract or otherwise." (180 N.E.2d at 737).

The underlying policy therefore in that decision as in our opinion of May 19, is that public contracts should be arms-length transactions. We believe that an arms-length relationship is best maintained where the dispositive inquiry is whether any individual would be "called upon to act or vote" upon any contract in which he has a pecuniary interest. It appears that *Kruse* supports that proposition and does not require a reconsideration of our May 19 opinion.

Finally, with respect to the inquiry concerning the General Condition dealing with conflict of interest in the Contract for Professional Consultation Services, that provision states that "no member of the governing body of the City or other unit of government and no other officer, employee, or agent of the City or other unit of government who exercises any function or responsibility in connection with the carrying out of the Project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract."

This language is similar to that discussed in our May 19 letter and required as a contract provision by UMTA. Here, as there, we believe that the language "refers to any employee of the contracting party who, in his official capacity, must pass on or at the very least, influence, as a result of his office the awarding of the contract." Because the officers of the CTA exercise no authority in granting the contract or over design or construction, it cannot be said that Mr. McDonough "exercises any function or responsibility in connection with the carrying out of the Project to which this Contract pertains."

Therefore, in considering the inquiries raised by UMTA's regional counsel, we do not find them to affect our opinion of May 19, 1978.

OSHA COMPLIANCE DURING CONSTRUCTION OF PUBLIC BUILDINGS

(A. T.—R. L. H.—May 1, 1979)

Under cover letters of February 21 and 22, 1979, we received copies of an OSHA Complaint and other materials related thereto which were sent by you to our client, the Public Building Commission of Chicago along with a request that they provide legal defense for you on said Complaint.

Although there was no question that the Public Building Commission of Chicago would *not* provide you with a defense in this matter, there being nothing contained in your contract even remotely requiring same, we determined to at least investigate the basis for the Complaint.

We have reviewed this matter with the Office of the Solicitor, U.S. Dept. of Labor, and have determined that the language of your contract with the PBC falls into what is referred to as the "grey area" of liability under the OSHA Act. The Solicitor's Office, therefore, cannot recommend dismissal of the claim against you but can settle same at a sum less than the \$840.00 claimed. An initial figure of \$300.00 was mentioned and a final settlement figure of One Dollar (\$1.00) was agreed to in your behalf. The settlement papers therefor are being forwarded directly to you by the Solicitor's Office for your signature and return.

The discussions with the Solicitor's Office revealed that a previous OSHA Complaint against Skidmore, Owings & Merrill gave rise to the guidelines under which an architect may or may not be liable under OSHA for safety problems on a construction project. Since the language of your contract does not specifically meet the guidelines absolving you from OSHA liability, you were considered in the "grey area" as indicated previously.

It is suggested that the following language be added to all of your contracts for design where you have no construction management responsibilities in order to clearly avoid any liability under OSHA:

"Nothing in this agreement shall be construed as giving the Architect the responsibility for or the authority to direct or supervise construction methods, techniques, procedures or safety methods."

We are advising the Public Building Commission of Chicago to process contract amendments to their contracts with you adding this language.

CUMULATIVE INDEX TO VOLUMES 24, 25, 26, AND 27

A

ADVERTISING AND HANDBILLS

Advertising,

Defined, *v. 25, p. 422.*

Expenditures for, *v. 26, p. 3.*

On public ways, *v. 27, p. 243.*

Advertising signs, amendment to zoning ordinances, *v. 25, p. 426.*

Advertising, sign for zoning purposes, *v. 25, p. 381.*

Advertising sign projecting into public way, compensation for removal of, *v. 26, p. 395.*

Aircraft, advertising from, *v. 25, p. 422, v. 26, p. 393.*

Airport displays, termination of, *v. 27, p. 345.*

Beaches, on public parkways, *v. 24, p. 554.*

Buses and taxicabs, advertising on, *v. 26, p. 393.*

Detective, advertising necessitating license, *v. 25, p. 318.*

Distribution at airports, *v. 26, p. 507.*

Distributions on public ways, *v. 25, p. 421.*

"For Sale" Sign Ban, residential areas, *v. 27, p. 242.*

Gasoline pump lights, inspection fee, *v. 24, p. 571.*

Handbills, interpretation of, *v. 25, p. 427.*

Lamp posts, used on, *v. 24, p. 570.*

Lease termination, display sign ownership, *v. 27, p. 242.*

Legal Advertising, necessary newspaper requirements, *v. 26, p. 427.*

Littering Laws, Handbill distribution, *v. 27, p. 240.*

Milk Cartons, advertising on, *v. 24, p. 243.*

Named sponsor, prima facie responsible, *v. 25, p. 425.*

O'Hare Airport,

Distribution of advertising at, *v. 25, p. 614.*

Films of Advertising at, *v. 25, p. 613.*

Signs at, *v. 26, p. 352.*

Parking facilities, sale of advertising space in, *v. 24, p. 566.*

Police "Courtesy Card", legality of, *v. 24, p. 565.*

Police Magazine Sales, *v. 27, p. 20.*

Posting of, prima facie evidence of responsibility, *v. 24, p. 567.*

Public ways,

On, *v. 25, p. 424; v. 26, p. 204.*

Near, *v. 25, p. 358.*

ADVERTISING AND HANDBILLS—Continued

- Railroad viaducts, prohibition of, v. 26, p. 395.
- Restrictions, distances, v. 25, p. 423.
- Signs, Illegal posting of, v. 27, p. 243.
- Sign regulation, uniformity of, v. 27, p. 241.
- Signs on private vehicles, v. 24, p. 569.
- "Soft Sell", described, v. 25, p. 613.
- Structures over public way, advertisement on, v. 26, p. 394.
- Undertakers, unlicensed officer named in, v. 24, p. 381.
- Use of space, vending machines, v. 25, p. 600.
- Venereal disease pamphlets, distribution of, v. 26, p. 224.

AIRCRAFT

- Advertising from, v. 25, p. 422; v. 26, p. 393.

AIR POLLUTION

- See also Environmental Control
- Air Quality Act of 1967, v. 26, p. 76.
- Control of, v. 25, p. 37.
- Discontinuance of railroad passenger service, v. 26, p. 361.
- Fines, maximum, v. 26, p. 75.
- Ordinances regulating, retroactivity of, v. 25, p. 75.
- United States E.P.A., policy of cooperation, v. 27, p. 98.

AIRPORTS

- Accommodation bus transportation, necessity of license for v. 25, p. 272.
- Advertising, v. 25, p. 613.
 - Display sign contract, termination of, v. 27, p. 344.
 - Ownership of display signs, v. 27, p. 242.
- Air cargo rate discrimination, v. 27, p. 99.
- Aircraft,
 - Noise pollution, v. 26, p. 505.
 - Parking fees, collection of, v. 24, p. 642.
 - Title dispute, v. 27, p. 371.
- Airlines, sex discrimination, v. 26, p. 499.
- Airport Use Agreement,
 - Promotional sales incident to business activity, v. 27, p. 357.
 - Restriction on separate business, v. 25, p. 611.

AIRPORTS—Continued

Airspace hazard, untimely notice of proposed construction, *v. 27, p. 368.*

Air traffic, authority to restrict volume of, *v. 24, p. 20.*

Alcoholic beverages, sale at, *v. 24, p. 31; v. 26, p. 225.*

Annexation, contiguity by connecting highways, *v. 25, p. 605.*

Baggage carousel—sole source procurement, *v. 26, p. 481.*

Bond fund, *v. 25, p. 199.*

Breach of security system, lessee's responsibility, *v. 27, p. 359.*

Concession leases, City Council to grant, *v. 24, p. 23.*

Concorde service, opposition to, *v. 27, p. 364.*

Construction heights, regulation of, *v. 26, p. 354.*

Courtesy vehicles, identification of, *v. 27, p. 247.*

De-control of rent-a-car charges, *v. 27, p. 369.*

Enactment of regulations, *v. 27, p. 362.*

Discipline for refusal of overtime, emergency, *v. 27, p. 69.*

Disposal of garbage, international terminal, *v. 27, p. 363.*

Engineering management and supervision charges, *v. 26, p. 499.*

Federal Aviation Agency, *v. 25, p. 599.*

Federal Aviation Administration,

Penalty, breach of security, *v. 27, p. 359.*

Proposed runway construction, city objection, *v. 27, p. 374.*

Flight fees, funding of, *v. 25, p. 497.*

Flight training school, *v. 25, p. 607.*

Form leases at, *v. 25, p. 462.*

Fuel tank installations, license for, *v. 24, p. 406.*

Hangar maintenance, tenant obligation, *v. 27, p. 360.*

Hangar site, use of, *v. 25, p. 603.*

Height restriction, *v. 25, p. 384.*

Helicopter, ordinance governing operation of, *v. 25, p. 604.*

Heliport, private, zoning status of, *v. 25, p. 720.*

Heliport Ordinance, *v. 26, p. 499.*

Proposed change, *v. 26, p. 502.*

Inappropriate land use near runway — motel, *v. 27, p. 255.*

International airport restaurants, elevators, expense for maintaining, *v. 25, p. 611.*

Landing fees,

Exemptions, *v. 25, pp. 601, 603.*

Interim adjustment request, *v. 27, p. 320.*

AIRPORTS—Continued

Non-revenue flights, v. 26, p. 502.

Schedule as basis for, v. 24, pp. 637, 718; v. 25, p. 599.

Lease negotiation, parking lot, v. 27, p. 370.

Leases, repossession upon default, v. 24, p. 667.

Maintenance account, reserve, v. 25, p. 475.

Meigs Field,

City's right to use, v. 25, p. 609.

Federal Aviation Administration, lease, air traffic control tower, v. 27, p. 360.

Fueling commercial airlines at, v. 25, p. 618.

Lease of office space in terminal building, v. 25, p. 608.

Opinion of title, v. 24, p. 668; v. 26, p. 503.

Midway Airport,

Construction of heliport in proximity to, v. 27, p. 365.

FAA Control Tower Lease, v. 27, p. 300.

Incompatible land use, building permit denial, v. 27, p. 164.

Minimum rent abatement, grounds for, v. 27, p. 301.

Opinion of title, v. 25, p. 618.

Municipal Building Bond, use of construction, legality of, v. 26, p. 451.

National Airport Noise Abatement Council, joining, v. 25, p. 470.

Navigation facility, construction in restricted zoning area, v. 24, p. 481.

Not-for-profit operation, v. 24, p. 719.

O'Hare Field,

Authorization for increased sewer flow, established concession, v. 27, p. 356.

Aviation easements, v. 25, p. 614.

Contribution booth regulations, legality of, v. 27, p. 372.

Federal inspection area for deplaning passengers, v. 27, p. 365.

Federal rights at, v. 25, p. 599.

Fuel system, participation requirement, v. 27, p. 357.

Handbills, distribution of, v. 25, p. 614.

Height restriction, city air rights, v. 27, p. 197.

Height restriction near, v. 25, p. 384.

Inappropriate land use, arena, v. 27, p. 355.

Land use restriction zone, proposed stadium, v. 27, p. 196.

AIRPORTS—Continued

- Leases and leasehold financing, v. 26, p. 503.
- Maintenance obligations, leased terminal areas, v. 27, p. 366.
- Newspaper vending in terminals, v. 27, p. 373.
- Objections to lease provisions, v. 27, p. 366.
- Opinion of title, v. 27, p. 364.
- Parking controls, v. 25, p. 606.
- Parking fee, v. 25, p. 606.
- Planned development, v. 25, p. 611.
- Police, jurisdiction at, v. 24, p. 718.
- Regulation of leafletting in terminal, constitutional challenge, v. 27, p. 362.
- Reserve maintenance account, v. 25, p. 475.
- Runways, bid specification, v. 24, p. 683.
- Runway control, v. 24, p. 724.
- Runway approach zone, building height restriction, v. 27, p. 187.
- Sidewalks, status as public or private, v. 24, p. 726.
- Signs at, v. 26, p. 352.
- Single trip permit, exemption from, v. 27, p. 154.
- Space leased, method of computing, v. 25, p. 517.
- Sub-lease, v. 25, p. 12; v. 26, p. 509.
- Sub-lease for non-aviation purposes, v. 25, p. 602.
- Taxicabs, power to regulate, v. 24, p. 386.
- Title Opinion, v. 27, p. 305.
- Transportation, single trip permits to other cities, v. 25, p. 282.
- Use of space, v. 25, p. 600.
- Water services, obligation for, v. 27, p. 301.
- Zoning of, procedure for, v. 24, p. 722.
- Zoning, variance, v. 26, p. 353.
- Picketing at airports, v. 26, p. 507.
- Public hearings, Appropriate office to hold, v. 26, p. 506.
- Reservoir not permitted use, land sold to state, v. 27, p. 354.
- Solicitors, regulations governing conduct invalid, v. 27, p. 374.
- Subleases, charging override, legality of, v. 26, p. 510.
- Taxiway construction—public hearings, v. 26, p. 506.
- Terminal public use area penalty, violation of regulation, v. 27, p. 359.
- Traffic regulations, enforcement procedures, v. 27, p. 246.
- Transportation, Department of Anti-Discrimination Review, v. 26, p. 152.

ALCOHOLICS

- Charge for treatment, *v. 25, p. 53.*
- Rehabilitation services, costs, *v. 27, p. 40.*
- Residential care home, *v. 27, p. 39.*

ALLEYS

- See Streets and Alleys.

AMBULANCES

- See Motor Vehicles.

AMUSEMENT AND AMUSEMENT PLACES

- Automatic Amusement devices,
 - kiddie rides, *v. 27, p. 149.*
 - licensing of, *v. 27, p. 147.*
- Billiard parlor, code requirement, *v. 25, p. 300.*
- Billiard room, full view required, *v. 25, p. 297.*
- Boxing, closed circuit telecast, *v. 25, p. 286.*
- Cabaret, Discotheque, classified as, *v. 25, p. 322.*
- Chess and checkers, tax applicable, *v. 25, p. 288.*
- Clear view required, when liquor license held, *v. 25, p. 259.*
- Devices,
 - Bagatelle and Pigeonhole, prohibition of, *v. 25, p. 295.*
 - "Buying Out the House", liability for tax, *v. 24, p. 380.*
 - Chicago Businessmen's Orchestra, *v. 24, p. 375.*
 - Junior Deputy Sheriff Practice Range, *v. 25, p. 286.*
 - License, transfer, *v. 24, p. 374.*
 - Livestock Exposition, *v. 24, p. 377.*
 - Lyric Theater, *v. 24, p. 373.*
 - "Magic Mirror Horoscope", *v. 24, p. 378.*
 - Orchestral Association of Chicago, *v. 24, p. 369.*
 - Scopitone, *v. 25, p. 298.*
 - Soldier Field, activities held in, *v. 24, p. 379.*
 - Tax decal, license revocation, *v. 27, p. 149.*
- Educational institution, near, *v. 26, p. 267.*
- Encore Theater, *v. 25, p. 290.*
- Exhibition of gaming equipment, sanctions, *v. 27, p. 111.*
- Food purveyor's license, *v. 27, p. 149.*
- Hobby Shop, miniature auto races in, *v. 25, p. 296.*
- Licenses,
 - Exemption from, *v. 26, p. 267.*

AMUSEMENT AND AMUSEMENT PLACES—Continued

- Hotels showing motion pictures, v. 26, p. 268.
- Operation in State Facility, v. 27, p. 147.
- Revocation of, v. 26, p. 271.
- Vested right creating right to, v. 25, p. 300.
- When required, in general, v. 25, p. 292.
- McCormick Place, v. 25, p. 285.
- Motion pictures in restaurants, lounges and discotheques, v. 26, p. 270.
- Motion pictures via closed circuit, v. 26, p. 269.
- Musicians in tavern, v. 25, p. 266.
- Not-for-profit coffee shop, entertaining in, v. 25, p. 303.
- Place of Amusement, licensing of, v. 27, p. 148.
- Police Film Review, Continuance of, v. 27, p. 34.
- Public dance hall employees, identification cards, v. 26, p. 266.
- Substitution of non-conforming zoning use, v. 25, p. 359.
- Tax on juke box in high school, v. 26, p. 270.
- Tax on retailer, v. 25, p. 287.
- Teenage dances, where liquor license has been granted, v. 25, p. 288.
- Theatre license, v. 26, p. 272.

AMUSEMENT TAX ORDINANCE

- Activities subject to,
 - Chess and Checkers, v. 25, p. 288.
 - Encore Theater, v. 25, p. 290.
- Boxing, Closed circuit, motion picture exemption not applicable, v. 25, p. 286.
- Exempt Organizations, v. 26, p. 271.
- Exempt organizations, methods used to raise funds, v. 25, p. 301.
- Exemption, benefit by charitable institution, v. 25, p. 294.
- McCormick Place, not applicable to, v. 25, p. 285.
- Private operation in state facility, v. 27, p. 147.
- Tax on juke box in high school, v. 26, p. 270.
- Tax on retailer, v. 25, p. 287.

ANIMALS

- Biting, confinement period, v. 26, p. 210.
- Burro, keeping as a pet, v. 24, p. 270.

ANIMALS—Continued

Dangerous, wild animals, keeping within city limits, v. 26, p. 209.

Dead animals, disposal of, v. 25, p. 310; v. 27, p. 330.

Dogs, See that Title.

Duck hunting on Lake Michigan, v. 26, p. 213.

Pigeons, Homing, regulation of, v. 24, p. 20.

Sale of License requirements for, v. 24, p. 428.

Veterinary services for Police Department, v. 26, p. 59.

ANNEXATION

East bank of North Shore Channel, v. 26, p. 462.

Procedure for, v. 24, p. 17; v. 26, p. 462.

Strip annexation, contiguity by connecting highways, v. 25, p. 605.

Zoning procedure for, v. 24, p. 492.

ANNUITY AND BENEFIT FUNDS

See specific fund name.

APPROPRIATIONS

Memorial, funds for, v. 24, p. 621.

Chicago Urban Transit District Annual Appropriation, v. 26, p. 421.

Ordinance,

City Council's duties regarding, v. 24, p. 16.

Publication of, v. 24, p. 18.

Police Board Budget Power, v. 27, p. 268.

Reserve maintenance account, v. 25, p. 475.

ARRESTS

See Police, Department of.

ASSESSMENTS

Water charges, liability of new owner, v. 26, p. 449.

AUTOMOBILES

See Motor Vehicles.

B

BANKS AND BANKERS

Tax on banks, validity of, v. 24, p. 410.

Utilities Tax, applicability to, v. 24, pp. 610, 611.

BIDS AND AWARDS

Additional charges, interpretation to justify, v. 25, p. 562.

Advertising, newspapers carrying, v. 24, p. 687.

Alteration of, v. 25, p. 596.

Awards after notification of termination, v. 25, p. 532.

Awards based on percentage completion, v. 25, p. 532.

Bid Addendum, Notice, effect of, v. 27, p. 337.

Bid deposit, refund of, v. 26, p. 479.

Bid instructions, violation of, v. 27, p. 338.

Bids prior to August 1, 1961, exempt from Sales Tax, v. 25, p. 533.

Bid price reduction, v. 27, p. 333.

Bid rejection for non-compliance with bid-bond requirement, v. 25, p. 550.

Bonds, requirement of, v. 25, p. 550.

Brand name or equal, v. 25, p. 542.

Cancellation of, penalties, v. 27, p. 329.

Certified check, unacceptable as substitute for Bid Bonds, v. 25, p. 536.

Change order, additional cost, v. 27, p. 327.

Changes in General Conditions after award, v. 26, p. 480.

Check not certified, effect of, v. 24, p. 690.

Collusion, disqualification for, v. 27, p. 335.

Conditions, affirmative action, v. 27, p. 325.

"Cost-Plus" contracts, v. 26, p. 483.

Counteroffer, v. 25, p. 690.

Deviation in procedure, effect of, v. 26, p. 474.

"Equal" bids, v. 25, p. 542.

Explanation, subsequent to opening, v. 26, p. 475.

Illinois Municipal Code, amendments to contract provisions of, v. 26, p. 490.

Labor Costs, escalation of, v. 27, p. 353.

Low bid, reduction of, v. 25, p. 538.

Lowest bid, accompanying deposit, v. 26, p. 474.

Lowest responsive bidder,

Food service, v. 27, p. 333.

Separable Contracts, v. 27, p. 335.

BIDS AND AWARDS—Continued**Mistake,**

Bids accepted after mistake, *v. 25, p. 540.*

Correction of, *v. 24, p. 684.*

Correction by other expression in contract, effect of, *v. 25, p. 566.*

Effect of, *v. 24, pp. 686, 689, 690; v. 25, p. 566.*

Equitable recision, mistake as cause for, *v. 25, p. 566; v. 26, p. 478.*

Removal of, *v. 25, p. 539.*

Modification after award, *v. 27, p. 326.*

Non-collusion affidavit, failure to execute, *v. 24, p. 685.*

Non-Responsive bid,

Effect of, *v. 27, p. 331.*

Contractors past performance, *v. 27, p. 332.*

Notary Public Jurat, requirement for, *v. 24, p. 691.*

Price Escalation, availability of, *v. 27, p. 338.*

Prospectus Compliance, award, *v. 27, p. 338.*

Price Adjustment, Option Agreement, *v. 27, p. 340.*

Purchase for "Evaluation", bids not required, *v. 24, p. 687.*

Redevelopment project, bids required, *v. 25, p. 534.*

Rejection of, *v. 25, p. 545.*

Code violations, *v. 27, p. 330.*

Award, waiver of, *v. 27, p. 336.*

Requirements in general, *v. 25, p. 548.*

Responsibility of bidder, *v. 26, p. 473.*

Retailers' Occupation and Use Tax, required in specification, *v. 25, p. 537.*

Seal Notorial, *v. 24, p. 691.*

Specifications, responsive to, *v. 25, p. 539.*

Taxes not included, *v. 25, p. 535.*

Truck hire, I.C.C. certification required, *v. 24, p. 686.*

Unit price,

Cubic yard as basis, *v. 25, p. 558.*

Reduction of, *v. 24, p. 683; v. 25, p. 538.*

When required, *v. 25, p. 590.*

Withdrawal of

General conditions, *v. 26, p. 476.*

With unilateral mistake, *v. 26, p. 477.*

With mistake known to both parties, *v. 25, p. 551.*

BILLBOARDS AND SIGNS

- Advertising defined for zoning purposes, *v. 25, p. 381.*
- Expressways and parks, proximity to, *v. 24, p. 568; v. 25, p. 426.*
- Expressways, proximity to, *v. 25, p. 423.*
- Identification signs, *v. 25, p. 425.*
- Illegal posting of, *v. 27, p. 243.*
- Illuminated signs,
 - Gasoline pump lights, *v. 24, p. 571.*
 - Inspection fees on multiple units, *v. 24, p. 564.*
- Lamp posts, attached to, *v. 24, p. 570.*
- Necessary signs, fulfilling governmental functions, *v. 25, p. 425.*
- Parking facilities, lease space for, *v. 24, p. 568.*
- Permit, revocation of, *v. 24, p. 493.*
- Projecting signs, legality of zoning proposals, *v. 24, p. 501.*
- Removal of, *v. 25, p. 420.*
- Residential use, proximity to, *v. 25, p. 369.*
- Viaduct clearance signs, *v. 25, p. 419.*

BOARD OF EDUCATION

See Education, Board of.

BOARD OF HEALTH

See Health, Board of.

BOARD OF LOCAL IMPROVEMENTS

Purchases and Bids, Purchasing Agent's power, *v. 24, p. 682.*

BONDS

See also Funds.

Airport, *v. 25, p. 497.*

Airport Bond Fund, *v. 25, p. 199; v. 27, p. 296.*

Bid Bond, certified check as, *v. 25, p. 536.*

Bid Bond, requirement for, *v. 25, p. 550.*

Chicago Parking Facility Revenue Bond, rules governing redemption dates and prices, *v. 26, p. 456.*

Chicago Port, Improvements, *v. 25, p. 518.*

Chicago Skyway Bond Issue, *v. 25, p. 449.*

BONDS—Continued

- City Clerk's signature, abbreviation of, v. 24, p. 655.
- Competitive bidding vs. negotiated bidding in the sale of bonds, v. 6, pp. 456, 457.
- Drainlayer, indemnity bond posted yearly, v. 25, p. 318.
- Expressway, use for other purposes, v. 24, p. 657.
- Loss of, v. 26, p. 450.
- McCormick Place, financing of reconstruction of, v. 26, p. 515.
- Municipal Building Bond, v. 25, p. 490.
- Municipal Buildings for police, v. 25, p. 481.
- Municipal Building Bond
 - Use of funds for erection of terminal buildings at Midway, v. 26, p. 451.
 - Use of to acquire buildings, v. 26, p. 453.
- Parking facilities, funds from sale of facilities used solely for bond purchase, v. 25, p. 494.
- Parking facility, meter maintenance
 - Fund for, v. 24, p. 633, p. 656.
 - Surplus, use of, v. 24, p. 630, p. 632.
 - Transfer of funds, v. 24, p. 631.
- Parking facilities
 - Use of sinking fund for redemption of, v. 26, p. 455.
 - Use of surplus, v. 25, p. 495; v. 26, p. 458.
- Performance, not operating cost, v. 24, p. 711.
- Performance Bond, contractor required to furnish, v. 25, p. 540; v. 26, p. 489.
- Proceeds, applied to purpose for issuing, v. 25, p. 499.
- Public transportation bond, use of proceeds from, v. 25, p. 500.
- Purchase by City Treasurer, v. 26, p. 450.
- Redevelopment bonds, sale, v. 26, p. 456, 457.
- Replacement of Lost Bonds, v. 27, p. 297.
- Returning, effect of, v. 25, p. 81.
- Signs, electric, v. 25, p. 492.
- Subway Revenue Bonds, v. 26, p. 457.
- Sureties, release of, v. 26, p. 458.
- Surety bonds, pay-out, v. 25, p. 497.
- Transportation Bond Act construed, v. 26, p. 460.
- U.S. Savings Bonds, administration of purchase by municipal employees, v. 26, p. 117.

BRIDGES

- Bridgetenders, retired—retroactive raises prohibited, *v. 25, p. 131.*
- Calumet Skyway Toll Bridge, ordinance approval for, *v. 24, p. 8.*
- Construction, under and over, *v. 26, p. 382.*
- Occupation by City, *v. 25, p. 417.*
- Vertical Height Clearance Signs, Railroad Underpass, *v. 27, p. 211.*

BROKERS

- Licensing, *v. 24, p. 412.*

BUDGET

- See Appropriations.

BUILDING, DEPARTMENT OF

- Air conditioning unit, *v. 25, p. 338.*
- Air conditioning unit, window, nuisance, *v. 24, p. 450.*
- Airport,
 - Planned development, *v. 25, p. 611.*
 - Incompatible land use permit denial, *v. 27, p. 164.*
- Auto body burning kiln, *v. 25, p. 355.*
- Basement as dwelling use, permanent injunction, *v. 27, p. 200.*
- Boarded up buildings, status of, *v. 24, p. 646.*
- Bus shelter construction, authority over, *v. 26, p. 383.*
- Certificate of compliance requirement in install contracts, *v. 26, p. 308.*
- Chicago Land Clearance Commission, *v. 25, p. 64.*
- Civic Center Plaza, Public Building Commission, authority over, *v. 26, p. 69.*
- Closed service station, underground gas storage, *v. 27, p. 113.*
- Codes,
 - Chicago Park District, subject to, *v. 24, p. 233.*
 - Chicago Park District, subject to inspection by City, *v. 25, p. 203.*
 - Chicago Port Authority, subject to, *v. 24, p. 445.*
- Church,
 - In business district, *v. 25, p. 360.*

BUILDING, DEPARTMENT OF—Continued

Parking requirement, off street, exemption from, *v. 27, p. 198.*

Court order, permission to construct dwelling, *v. 27, p. 194.*

Electrical, retroactivity of, *v. 24, p. 462.*

Enforcement, requirements for, *v. 25, p. 342.*

Exemption for converted units, *v. 27, p. 162.*

Municipal Housing Code, glass panel door, *v. 25, p. 328.*

Retroactive effect of, *v. 24, p. 438, p. 454.*

Violations, liability of land trustee for, *v. 24, p. 434.*

Violations

Nature of proof necessary, *v. 26, p. 300.*

Procedure to ensure compliance, *v. 26, p. 299.*

"Ticket" procedure, use of, *v. 26, p. 300.*

Condominium, conversion from cooperative, report requirement, *v. 27, p. 178.*

Conversions,

Illegal, liability of mortgagee, *v. 24, p. 453.*

Proper fire resistance required, *v. 26, p. 304.*

Validity of penalty proposal, *v. 24, p. 15.*

Court decree, effect on issuance of zoning permits, *v. 25, p. 373.*

Criminal liability of wrecking company, *v. 26, p. 301.*

Debris, hauling of, *v. 26, p. 277.*

Deconversion, treatment under renewal plan, *v. 24, p. 466.*

Demolition,

Authority for, *v. 24, p. 433; v. 25, p. 332.*

Emergency contract, procedure for, *v. 24, p. 716.*

Fire gutted building, *v. 27, p. 169.*

Garages, dilapidated, *v. 26, p. 302.*

Inability to turn over property, *v. 25, p. 349.*

Lien for, priority of, *v. 24, p. 443.*

Unsafe and dangerous buildings, *v. 26, p. 302.*

Desk Clerk Ordinance, applicability of, *v. 24, p. 274.*

Distilling and condensing plants, *v. 25, p. 248.*

Dormitory construction, R-4 district, *v. 27, p. 201.*

Drainage Surface, on private property, *v. 24, p. 287.*

Dry Cleaning, self-service establishments, regulation of, *v. 26, p. 329.*

Eaves, included in determining "ground area", *v. 24, p. 447.*

Electric locks, institutions where allowed, *v. 25, p. 241.*

BUILDING, DEPARTMENT OF—Continued

- Emergency rehabilitation, *v. 27, p. 172.*
- Equities, consideration of, *v. 25, p. 377.*
- Federal buildings, immunity from Municipal Code regulations, *v. 26, p. 153.*
- Federal buildings, jurisdiction over, *v. 25, p. 202.*
- Federal use, zoning exemption for, *v. 25, p. 366.*
- Fire alarm system, requirement for, *v. 24, p. 79.*
- Fire code for schools, *v. 27, p. 168.*
- Fire Department, jurisdiction over, *v. 25, p. 84.*
- Fire extinguishers in multiple dwellings, *v. 25, p. 347.*
- Flammable liquid tank, *v. 25, p. 337.*
- Floor area ratio, joined structures, *v. 27, p. 188.*
- Frame house on block with brick buildings, *v. 25, p. 353.*
- Free permits for University of Chicago, *v. 25, p. 340.*
- Frontage consents, *v. 26, p. 355.*
- Garage,
 - Classification of, *v. 25, p. 337.*
 - Public, Defined, *v. 25, p. 347.*
- Gasoline in hotel garage, permit for, *v. 24, p. 441.*
- General residence district, construction of two-dwelling unit, *v. 27, p. 202.*
- Handicapped, facilities for the, *v. 26, p. 304.*
- Heating, *v. 25, p. 242.*
- Heating, lack of—procedure, *v. 26, p. 299.*
- Height restrictions near airport, *v. 25, p. 384.*
- Hotels, *v. 25, p. 331.*
- Ice storage unit, permits for, *v. 24, p. 432.*
- Injured employee, liability of City for, *v. 25, p. 489.*
- Inspection,
 - Canopies, on and over private property, *v. 24, p. 456.*
 - Chicago Park District installations, *v. 24, p. 223.*
 - Fees, exemption of Board of Education from, *v. 26, p. 306.*
 - McCormick Place, liability for, *v. 27, p. 161.*
 - Refusal to submit to, *v. 24, p. 461.*
 - Reports, public access to, *v. 27, p. 177.*
 - Ventilating and exhaust systems, *v. 24, p. 435.*
 - Where complaint has been filed, *v. 26, p. 299.*
 - "Whizzer Warrants", *v. 26, p. 307.*
- International Amphitheater, addition to, *v. 25, p. 470.*
- "Landmarks", *v. 26, p. 308.*
- Lead poisoning victim, liability of city to, *v. 26, p. 313.*

BUILDING, DEPARTMENT OF—Continued**Lots,**

25 Foot, homes on, v. 24, p. 469.

Unrecorded, construction on, v. 24, p. 482.

Lot requirements for multistory building, v. 25, p. 330.

Minimum area requirement, R-3 zoning, v. 27, p. 200.

Motor Freight Terminal, v. 25, p. 339.

Municipal uses, zoning exemptions for, v. 25, p. 366.

Nuisance, demolition of, v. 24, p. 433; v. 25, p. 341.

Non-conforming use,

right to, v. 25, p. 342.

expansion of, v. 27, p. 192.

Parking space in relation to floor area, v. 25, p. 334.

Party wall, demolition of, v. 24, p. 648.

Pay toilet prohibition, v. 27, p. 170.

Permits,

Architectural drawings required, v. 24, p. 457.

Chicago Park District installations, v. 24, p. 228.

Chicago Port Authority installations, v. 24, p. 445.

Construction adjacent to tri-level roadway, v. 27, p. 471

Electrical work by home owner, v. 24, p. 440.

Explosion Hazard Gas, v. 25, p. 335.

Extension after partial performance, v. 24, p. 463.

Fee exemption, state construction, v. 27, p. 176.

Fees, waiver of, v. 26, p. 313.

Foundation only, v. 24, p. 457.

Gasoline tank in apartment garage, v. 24, p. 485.

Green house construction zoning ordinance non-applicable, v. 27, p. 180.

Information requests, v. 27, p. 169.

Issuance after construction, v. 24, p. 459.

Nursing home, v. 26, p. 333.

Special use certification, court order, v. 27, p. 186.

Oil storage tanks, v. 25, p. 329.

"Piece Meal" issuance, v. 24, p. 460.

Plumbing repairs, minor, v. 24, p. 424.

Propane storage tanks, v. 25, p. 329.

Public improvement site, proposed issuance within, v. 24, p. 445.

Refund of fee, v. 25, p. 348.

Refusal of, pending legislative action, v. 24, p. 465.

Revocation, parking regulations, v. 26, p. 314.

BUILDING, DEPARTMENT OF—Continued

- Smoking, public places, *v. 27, p. 115.*
- Street improvement escrow, requirement for, *v. 24, p. 543.*
- Unimproved lots, *v. 24, p. 409.*
- Vested right to, *v. 24, p. 465, p. 505.*
- Walk-up window, *v. 25, p. 356.*
- Withholding, grounds for, *v. 25, p. 343.*
- Zoning amendment, proposed, effect on, *v. 24, p. 491.*
- “Planned Development”,
 - Defined, *v. 25, p. 82.*
 - Plats of resubdivision, approval, *v. 27, p. 190.*
 - Procedure, *v. 25, p. 371.*
 - Property report requirement, *v. 27, p. 166.*
 - Procedure, *v. 25, p. 371.*
- Public Amusement places, *v. 27, p. 148.*
- Ready-mix concrete bin, permit for, *v. 24, p. 472.*
- Receivers for repairs, *v. 25, p. 326.*
- Records,
 - Disclosure of, *v. 25, p. 78.*
 - Microfilming, *v. 24, p. 81.*
 - Right of Public to inspect, *v. 24, p. 450.*
- Regulation requirement, state agency building, *v. 27, p. 166.*
- Rodent Control Service, *v. 26, p. 315.*
- School, Classification as, *v. 25, p. 342.*
- School, sprinkler system required in, *v. 25, p. 342.*
- Segregation, *Gautreaux v. City of Chicago*, *v. 26, p. 75.*
- Shopping center in residential district, *v. 25, p. 383.*
- Signs, inspection fees, *v. 24, p. 564.*
- Swimming pool, private, regulation of, *v. 24, p. 448, p. 497.*
- Storage of high sulfur content fuels, *v. 27, p. 170.*
- Stories, how determined, *v. 25, p. 330.*
- Terminal, motor freight, definition, *v. 25, p. 345.*
- Theaters,
 - Fire curtain blocked by screen, *v. 24, p. 443.*
 - Outdoor screen, permit for widening, *v. 24, p. 403.*
- Unightly buildings, status of, *v. 24, p. 464.*
- Water towers, height limitation, *v. 24, p. 473.*
- Zoning amendment, validity of court order prior to, *v. 27, p. 183.*
- Zoning Ordinances, effect on building restrictions, *v. 25, p. 364.*

C

CALUMET SKYWAY TOLL BRIDGE

See Bridges.

CHANGE ORDER

Approval, requirements for, *v. 25, p. 591.*

Additional work, relation required, *v. 25, p. 572.*

Justification for approval, dependent on specifications, *v. 25, p. 566.*

Opinions concerning, necessity for, *v. 25, p. 565.*

Quantum Meruit basis, *v. 25, p. 552.*

CHARITABLE INSTITUTIONS AND ORGANIZATIONS

Food dispenser's license, fee exemptions for, *v. 26, p. 280.*

Museum of Science and Industry, exemptions pertaining to, *v. 26, p. 292.*

Regulation of solicitation by, *v. 24, p. 1.*

CICAGO HOUSING AUTHORITY

Bond for sidewalk coal-hole, *v. 24, p. 238.*

Building code violations—see Buildings, Department of.

Construction, Flammable liquids, storage of, *v. 25, p. 215.*

Demolition liens, appropriation of funds to protect, *v. 26, p. 429.*

Fair Housing Ordinance—see Human Relations, Chicago Commission on, *v. 26, p. 161.*

Funds, variance in use of, *v. 25, p. 216.*

Garbage removal by City, *v. 24, p. 237.*

Glass panel door, when required by housing code, *v. 25, p. 328.*

Grant, what constitutes action sufficient to earn a, *v. 26, p. 163.*

Heating, lack of—procedure, *v. 26, p. 299.*

HUD, complince of redevelopment plans to, *v. 26, p. 175.*

Leasing space from City, *v. 24, p. 239.*

Model cities, contracting, *v. 26, p. 167.*

Mortgage note, authority of city to execute, *v. 26, p. 167.*

Special Policemen, arrest powers of, *v. 26, p. 160.*

Sewers, City to provide, *v. 24, p. 240.*

Sewer permits and fees, exempt, *v. 25, p. 213.*

Urban renewal, federal loan for, *v. 26, p. 154.*

CHICAGO PARK DISTRICT

- Boulevard underpasses, duty to clean, v. 24, p. 236.
- Cigarette license, sales within jurisdiction of, v. 24, p. 227.
- City Building Code, subject to, v. 24, p. 233; v. 25, p. 203.
- Consolidation,
 - City of Chicago and Board of Education, v. 24, p. 229.
 - Driveway permits, effect on, v. 24, p. 423.
 - Police retirement age under, v. 24, p. 235.
- Electrical installations, City permits for, v. 24, p. 228.
- Employees,
 - City jurisdiction over, v. 25, p. 204.
 - Part-time job with M.T.S., v. 24, p. 75; v. 25, p. 75.
- Fence maintenance, Lake Shore Drive, v. 26, p. 156.
- Food concessions, legality of, v. 26, p. 157.
- Grant Park, relocation of Stock Exchange arch in, v. 26, p. 311.
- Health Inspections, subject to, v. 25, p. 203.
- Hospital within, licensing, v. 24, p. 67.
- Installations, power of City to inspect, v. 24, p. 223.
- Jurisdiction in general, v. 26, p. 159.
- Meigs Field, v. 25, p. 609.
 - Office space in terminal building, Lease of, v. 25, p. 608.
 - Opinion of Title, v. 26, p. 503.
- Passages, maintenance of, v. 25, p. 208.
- Paving Streets, appropriation for, v. 24, p. 226.
- Police Power of City, authority of, v. 25, p. 210.
- Repair of sidewalks, v. 25, p. 415.
- Southwest Highway, acquisition of easements for, v. 25, p. 521.
- Transfer of employees from, effect on retirement requirements, v. 25, p. 208.
- Underground parking, v. 25, p. 207.

CHICAGO PLAN COMMISSION

- Conflicts of interest, v. 27, p. 160.

CHICAGO POLICEMEN'S BENEVOLENT AND WELFARE ASSOCIATION

- Right to negotiate, v. 25, p. 26.

CHICAGO PORT AUTHORITY

- By laws, generally, v. 26, p. 92.
- City Building Code, subject to, v. 24, p. 445.
- City property, leases to, v. 24, p. 661.
- Improvements, v. 25, p. 518.
- Jurisdiction over abutting premises, v. 25, p. 80.
- Zoning, status of, v. 24, p. 475.

CHICAGO PUBLIC LIBRARY

- Annuity program for employees, v. 26, p. 93.
- Book Binding, use of convict labor for, v. 24, p. 713.
- City architect, charges for service to, v. 24, p. 642.
- Educational institution, Chicago Public Library as an, v. 26, p. 93.
- Employee's negligence, liability of City for, v. 24, p. 649.
- Land acquisition procedure, v. 26, p. 93.
- Leases, Holdover tenants, v. 27, p. 54.
- Liability for torts, v. 24, p. 103; v. 27, p. 278.
- Newsfilm donations, v. 27, p. 285.
- "Price Fixing" in the sale of books to, v. 26, p. 94.
- Property tax, v. 25, p. 530.
- Public restrooms, no legal duty to provide, v. 27, p. 114.
- Zoning, obtaining special use for construction, v. 26, p. 349.
- Zoning ordinance, exemption from, v. 24, p. 487.

CHICAGO RECREATION COMMISSION

- Members, Tenure status, v. 24, p. 85.

CHICAGO TRANSIT AUTHORITY

- Advertising on buses, v. 26, p. 393.
- Chicago Rapid Transit Company, annuity credit for service to, v. 26, p. 126.
- Chicago Urban Transit District Annual Appropriation, v. 26, p. 421.
- Chicago Urban Transportation District
 - Possible extension of boundary, v. 26, p. 372.
 - Powers and duties of, v. 26, p. 371.
- Consent required for new bus operation, v. 25, p. 396.
- Damages caused by installation of water main, liability of city for, v. 26, p. 367.

CHICAGO TRANSIT AUTHORITY—Continued

Defined, as a corporation, not under jurisdiction of ICC, v. 26, p. 368.

Driveway,

Fee required, v. 25, p. 397.

Maintenance of, v. 25, p. 403.

Permits, requirements for payment, v. 27, p. 212.

Employees, effect of prior service on Civil Service vacation rights, v. 26, p. 111.

Englewood Terminal, authority to construct, v. 25, p. 405.

Exclusive right, infringement on, v. 25, p. 400.

Handicapped persons, accessibility, v. 27, p. 225.

Height Clearance Signs, requirements of, v. 27, p. 226.

Permit required for electrical contractor, v. 24, p. 540.

Radios on buses and trains, authority to prohibit, v. 26, p. 367.

Rapid transit cars, use of various bond funds to purchase, v. 26, p. 437.

Reduced fares for senior citizens, v. 25, p. 398.

Reimbursement proposal, v. 25, p. 397.

Right of way, maintenance of, v. 25, p. 401.

Service Credit for pension purposes, v. 27, p. 81.

Smoking on Vehicles, prohibition of, v. 24, p. 532.

Special use, filing fee, exemption from, v. 26, p. 368.

Taxes, exemption from, v. 24, p. 532.

Traffic regulations, exemptions from, v. 24, p. 527.

Transit facilities, authority for construction of, v. 25, p. 404.

Transit district election, closing of taverns for, v. 26, p. 239.

West Side Subway track work, contract for, v. 24, p. 694.

Wooden elevated coaches, proposed amendment concerning, v. 24, p. 533.

CHICAGO TUNNEL COMPANY

Settlement of claim against City, v. 24, p. 651.

Tunnel ownership, status of, v. 24, p. 666.

CIGARETTES AND CIGARETTE DEALERS

Cigarette tax and home rule, v. 26, p. 414.

License,

Application for, duty to accept, v. 24, p. 409.

Concessionaire, v. 24, p. 265, p. 266.

CIGARETTES AND CIGARETTE DEALERS—Continued

- Fees, Reasonableness, v. 27, p. 154.
- Park District Concessions, requirements for, v. 24, p. 227.
- Several locations, requirements for, v. 25, p. 314.
- Vending Machine at U.S. Army Depot, v. 24, p. 400.
- Smoking paraphernalia, unlawful use, v. 27, p. 118.
- Tobacco products tax,
 - Constitutionality of, v. 26, p. 421.
 - Exemption of City from, v. 26, p. 421.
- Vending machines,
 - Hospital, installations prohibited in, v. 24, p. 289.
 - Remotely activated, v. 24, p. 294, p. 413.
 - City colleges, v. 26, p. 211.
- Wholesalers, records of transactions required, v. 26, p. 224.

CIRCUIT COURT OF COOK COUNTY

- Arrest record, order to expunge, v. 26, p. 8.
- Search warrants, procedure in securing and returning, v. 26, p. 23.
- Work-release from jail, v. 26, p. 71.

CITY ARCHITECT

- Services to Public Library, charges for, v. 24, p. 642.

CITY CLERK

- Bond signature, abbreviation of, v. 24, p. 655.
- Closing-Out sale,
 - License for, v. 24, p. 270.
 - Revocation of license, v. 24, p. 268, p. 289.
- Fish and game license fees, income tax on, v. 24, p. 87.
- Index of licenses, alphabetical, v. 24, p. 83.
- License records, availability to assessor, v. 24, p. 86.
- Liquor license, petition for, v. 27, p. 129.
- Obligation to keep municipal papers, v. 26, p. 5.
- Records,
 - Destruction and storage of, v. 24, p. 407.
 - Microfilming of, procedure for, v. 24, p. 90.
- Removal sale, license for, v. 24, p. 269.
- Return of bonds by, v. 25, p. 481.
- Sale, goods from distressed source, v. 24, p. 291.

CITY COLLECTOR

Cigarette dealers license application, duty to accept, v. 24, p. 409.

Fees, payment to, v. 25, p. 474.

Machine shop defined, licensing, v. 26, p. 289.

Refund of building fee for charitable institutions, v. 25, p. 348.

Refund on liquor license rejection, v. 25, p. 263.

CITY COLLEGES

Cigarette vending machines in, v. 26, p. 211.

CITY COMPTROLLER

Bonds,

Loss of, v. 26, p. 450.

Sale of to City Treasurer, v. 26, p. 450.

Sale of on negotiated bid basis, v. 26, p. 456, p. 457.

United States Savings, administration of purchase by municipal employees, v. 26, p. 117.

Chicago Transit Fund, control over, v. 25, p. 397.

Community Improvement Bond Fund, use of, v. 26, p. 428.

Contracts, duty in execution of, v. 24, p. 693.

Demolition liens, appropriation of funds to protect, v. 26, p. 429.

Destruction of Records, Requirements, v. 27, p. 47.

Financial statements, providing, v. 26, p. 430.

Inspection fees, exemption of Board of Education from, v. 26, p. 306.

Investment by City in certificates of deposit issued by an out-of-state bank, v. 26, p. 427.

Judgments, authority over, v. 25, p. 478.

Leases, renewal of, v. 26, p. 464.

Low bid deposits, authority over, v. 25, p. 470.

Payments to city by railroads, use of, v. 26, p. 438.

Parking revenue, authority over, v. 25, p. 432.

Personal services, report to Council for, v. 25, p. 66.

Railroads, tax refund reserve, v. 26, p. 447.

Rapid transit cars, use of various bond funds for, v. 26, p. 437.

Records, destruction and microfilming of, v. 24, p. 98.

Special assessments, procedure concerning, v. 25, p. 465.

Subpoena of City Comptroller, v. 27, p. 46.

CITY COMPTROLLER—Continued

Subway Revenue Bonds, v. 26, p. 457.

Transfer of funds, contingency accounts, v. 24, p. 628.

Transfer of funds, surplus revenue account, v. 26, p. 431.

Treasurer's duties, authority to perform, v. 24, p. 91.

Trust fund, legal transfer of, v. 25, p. 472.

Warrants,

Issued in excess of funds against which it is drawn,
illegality of, v. 26, p. 438.

Past due, procedure for collection of, joinder of parties,
v. 26, p. 442.

Water charges, authority over funding of, v. 25, p. 527.

CITY COUNCIL

Airport, sub-lease, v. 25, p. 12.

Air-traffic, authority to restrict, v. 24, p. 20.

Aldermanic election contest, v. 24, p. 13.

Alderman,

Effect of reelection on, v. 26, p. 124.

Eligibility for office, Liquor Salesman, v. 27, p. 4.

Increase salary, v. 24, p. 19.

Salary assignment to charitable organization, v. 26, p.
1.

Alderman's expense account, reporting, v. 26, p. 3.

Appropriation ordinance, authority over, v. 24, p. 19.

Authority to enter into Federal Grant agreement, v. 27, p.
102.

Bond issues, Authority over, v. 25, p. 499.

Chicago Urban Transportation District—see Chicago Transit
Authority

Claims against City, authority over, v. 25, p. 488.

Commission Appointment, v. 27, p. 9.

Comptroller's Report, v. 25, p. 66.

Concession leases, power to grant, v. 24, p. 23.

Conservation and Redevelopment, v. 25, p. 7.

Conservation Board Acquisition, approval of, v. 24, p. 24.

Continuous body, v. 25, p. 9.

Crime Committee, status and membership, v. 24, p. 9.

Cultural and Economic Development, Committee on, Land-
marks, see that title, v. 26, p. 308.

Curfew ordinances amended, v. 25, p. 247.

Democratic Convention of 1968, see that title, v. 26, p. 45.

Demolition of dangerous and unsafe buildings, v. 26, p.
302.

CITY COUNCIL—Continued

- Equal employment ordinance, power to pass, *v. 25, p. 8.*
- Exclusive franchise other than C.T.A., no power to grant, *v. 25, p. 396.*
- Executive budget, duties regarding, *v. 24, p. 16.*
- Fair housing ordinance, power to pass, *v. 25, p. 16.*
- Fluoridation referendum,
 - Power to call, *v. 24, p. 3.*
 - Result advisory, not mandatory, *v. 24, p. 5.*
- Heliport Ordinance, *v. 26, p. 499.*
- Home rule—see that title.
- Illinois Commerce Commission, authority over, *v. 25, p. 15.*
- Inspection fee exemption, granting, *v. 24, p. 397.*
- Jury fees, authority over, *v. 25, p. 4.*
- Landmarks—see Landmarks
- Lead poisoning victim, liability of city to, *v. 26, p. 313.*
- Legislative resolution, legal effect, *v. 27, p. 5.*
- Licenses, committee on, duties of, *v. 24, p. 10.*
- Memorial, appropriate funds for, *v. 24, p. 621.*
- Municipal facilities, non-governmental use, *v. 27, p. 35.*
- Nature of the city council, control over the, *v. 26, p. 5.*
- Navy pier lease of facilities, authorization required, *v. 26, p. 465.*
- Omnibus vote, *v. 27, p. 5.*
- Open occupancy, legislation, power to pass, *v. 25, p. 3.*
- Ordinance, interpretation of amendment to, *v. 25, p. 1.*
- Park activities, power to investigate, *v. 25, p. 204.*
- Pension credits, resolution granting, *v. 24, p. 187.*
- Police Board, legality of, *v. 24, p. 53.*
- President Pro Tempore, duties of, *v. 26, p. 4.*
- Private welfare funds, authority over, *v. 25, p. 11.*
- Public attendance at, *v. 25, p. 5.*
- “Public information” centers ordinance, proposed, *v. 26, p. 97.*
- Purchasing Act, power to effect scope of, *v. 25, p. 588.*
- Repossessed HUD property, acquisition of, *v. 27, p. 7.*
- Retroactive application of legislation, *v. 26, p. 284.*
- Rewards, civilian heroism, *v. 24, p. 627.*
- Rooming house, power to regulate, *v. 24, p. 2.*
- Rules, interpretation of amendment to, *v. 24, p. 7.*
- Sessions, open to public, *v. 26, p. 4.*
- Short wave radio, ordinance restriction possession of, *v. 24, p. 15.*

CITY COUNCIL—Continued

- Skyway, toll increase, approval needed, *v. 25, p. 13.*
- Soliciting funds for charity, regulating, *v. 24, p. 1.*
- Special meeting, call for, *v. 25, p. 10.*
- Speed limits, authority to set, *v. 25, p. 430; v. 26, p. 408.*
- Submission of plats for approval, *v. 27, p. 189.*
- Sunday closing ordinance, proposed, *v. 24, p. 282.*
- Vacancies, between elections, procedures for filling, *v. 26, p. 4.*
- Vacation of streets and alleys, relevant consideration, *v. 25, p. 507.*
- Wards, restricting of, procedure, *v. 24, p. 21.*
- Weapons, regulating sale of, *v. 24, p. 251.*
- Zoning change, *v. 25, p. 6.*

CITY FUNDS

See Funds—City.

CITY PLANNING, DEPARTMENT OF

- Planned development, applicability of Zoning Ordinance, *v. 25, p. 370.*
- Zoning Amendment, responsibility for, *v. 24, p. 483.*
- Zoning and annexation procedures, *v. 24, p. 492.*

CITY PROPERTY

- Acquisition of, Proposed Ordinance, *v. 27, p. 306.*
- Acquisitions, Real Property, *v. 27, p. 304.*
- Adverse possession, title through, *v. 25, p. 520.*
- Alley by Prescription, *v. 27, p. 232.*
- Annexation—see that title.
- Artists' works, "Artists in Residence Program", *v. 27, p. 72.*
- Bankruptcy proceeding, property acquisition, *v. 27, p. 294.*
- Chicago Freight Tunnel, liability for damages caused by collapse of, *v. 26, p. 467.*
- Chicago Housing Authority, lease to, *v. 24, p. 239.*
- Chicago Port Authority, lease to, *v. 24, p. 661.*
- Chicago Public Library, taxation of, *v. 25, p. 530.*
- Chicago Tunnel, ownership status, *v. 24, p. 666.*
- Compensation settlement, Columbus Drive Extension, *v. 27, p. 313.*
- Conduit, sale of, *v. 27, p. 307.*
- Consolidation between City, Park District and Board of Education, *v. 24, p. 229.*

CITY PROPERTY—Continued

Construction over streets, *v. 27, p. 221.*

Conveyance, effect of error in legal description and deed, *v. 26, p. 378.*

Crosstown Expressway, acquisition of property for, *v. 26, p. 510.*

Demolition, party wall obligation of city, re: adjoining property, *v. 26, p. 379.*

Easements,

Amendments thereto, *v. 27, p. 311.*

Overpass grant, *v. 27, p. 311.*

Fixtures on, status of, *v. 24, p. 659; v. 25, p. 502.*

Funds from, sale of, *v. 25, p. 503.*

Illinois Athletic Club, Subsurface space, *v. 27, p. 309.*

Land acquisition procedure, *v. 26, p. 93.*

"Landmarks" see that title

"Landmark" status, public hearing for structure to receive, *v. 26, p. 309.*

Land reclaimed from Lake, *v. 27, p. 302.*

Leased premises, Certificate of estoppel, *v. 27, p. 348.*

Leasehold improvements, compensation for, *v. 27, p. 299.*

Leasehold interest, effect of default, *v. 27, p. 308.*

Lease water fund property for park, *v. 24, p. 670.*

Lease, without reasonable compensation, legality of, *v. 26, p. 462.*

Liability for thefts of, *v. 27, p. 71.*

Meigs Field, Opinion of Title, *v. 24, p. 668; v. 26, p. 503.*

Mental Health Center, acquisition of, *v. 27, p. 314.*

Midway Airport, Opinion of Title, *v. 24, p. 662.*

Municipal land conveyances, *v. 27, p. 315.*

Navy Pier,

Electrical system at, ownership of, *v. 24, p. 654.*

Lease of facilities, City Council authorization required, *v. 26, p. 465.*

94th Street extension, easement, *v. 27, p. 310.*

O'Hare Airport, Title opinion, *v. 27, pp. 305, 364.*

Parking facility property, sale of, regulations concerning, *v. 26, p. 465.*

Possible reverter rights, *v. 25, p. 507.*

Public garages, employees, under Fair Labor Standards Act, *v. 26, p. 401.*

Randolph Street station remodeling of by Illinois Central Railroad Company, *v. 26, p. 361.*

CITY PROPERTY—Continued

- Rent abatement, untenable premises, *v. 27, p. 309.*
- Rent, mistake in collection of, *v. 26, p. 464.*
- Sales of, to employees of city, *v. 27, p. 78.*
- Sales tax payments, liability for, *v. 27, p. 352.*
- Sherman House Hotel, Eminent Domain, *v. 27, p. 317.*
- Sidewalk and personal injury, maintenance of, *v. 26, p. 466.*
- Signs, posting on city poles, *v. 26, p. 467.*
- Special Assessments, cancellation of, *v. 27, p. 323.*
- Stock Exchange arch in Grant Park, relocation of, *v. 26, p. 311.*
- Storage charges, Liability for, *v. 27, p. 279.*
- Tavern located on acquired property, *v. 24, p. 671.*
- Tuberculosis Sanitarium, North Park Village, *v. 27, p. 316.*
- Unneeded Facilities, disposition, *v. 27, p. 305.*
- Use Fees, Kinzie street ramp, *v. 27, p. 151.*
- Use of City property for sectarian religious memorials, *v. 25, p. 502.*
- Vacation of streets and alleys, compensation for, *v. 26, p. 381.*
- Vehicles, stickers fees exempt, *v. 26, p. 471.*

CITY REAL ESTATE AGENT

- Receiver for repairs, precluded from service as, *v. 25, p. 326.*

CITY SEALER

- Weights and Measures Act, enforcement of, *v. 26, p. 70.*

CITY TREASURER

- Accounting procedure, statutory requirements, *v. 25, p. 104.*
- Comptroller, authority to act in lieu of, *v. 24, p. 91.*
- Financial statement to a private source, authority to provide, *v. 26, p. 430.*
- Low bid deposits, *v. 25, p. 470.*
- School Teachers' Pension Fund, custody of, *v. 24, p. 96.*

CIVIC CENTER

- Zoning exemption, *v. 25, p. 366.*

CIVIL RIGHTS

Bid Condition, Equal Employment affirmative action, v. 27, p. 325.

Penalties for violation, v. 27, p. 126.

Sex Discrimination, v. 27, p. 361.

CIVIL SERVICE

See also Employees of City

Absenteeism, effect of, v. 25, p. 116.

Alias, effect of use of, v. 25, p. 102; v. 26, p. 149.

Applications,

 Citizenship requirement for, v. 26, p. 106.

 Falsification on, v. 25, p. 87.

 Falsification as "cause" for discharge, v. 24, p. 133.

 Legality of inquiries regarding convictions, v. 27, p. 61.

Arrest record, effect on application for employment, v. 26, p. 101.

Certification, suspended employee, right to withhold, v. 24, p. 126.

Charges, time requirement on filing, v. 24, p. 139.

Chicago City Junior College employees,

 Pension rights, v. 25, p. 144.

 Rules governing, v. 26, p. 104.

Child Labor Laws, hiring of minors, v. 27, p. 78.

Classification after separation, v. 25, p. 113.

Classification,

 Effect on contribution to Laborers' Fund, v. 26, p. 148.

 Chief operating engineer, v. 27, p. 68.

 Position paid by Federal funds, v. 24, p. 129.

 Position plan, revision, v. 27, p. 71.

Conflict of interest, removal from position for, v. 26, p. 105.

Crossing guard vacation and sick leave status, v. 24, p. 122.

Debt, refusal to pay, v. 25, p. 103.

Discharge,

 For cause, v. 25, p. 103.

 Accumulated vacation pay, v. 27, p. 77.

 Right to prior classified status after, v. 24, p. 126.

Discipline,

 For "cause", v. 25, p. 88.

 For misconduct, v. 27, p. 66.

 For refusal of overtime, emergency, v. 27, p. 69.

CIVIL SERVICE—Continued

Duty disability, *v. 25, p. 175.*

See also Laborers and Retirement Board Employees' Annuity and Benefit Fund.

Duty disability pensioner, charges against, *v. 24, p. 112.*

Efficiency marks, computation of, *v. 24, pp. 123, 124.*

Efficiency rating and work record, review of, *v. 26, p. 122.*

Eligibility register, procedure to determine priority, *v. 26, p. 111.*

Fire Department, minority hiring in, *v. 26, p. 87.*

Fire Marshals examination, eligibility for, *v. 24, p. 115.*

Firemen, rights before disciplinary board, *v. 26, p. 89.*

Job performance evaluation, *v. 27, p. 60.*

Laid-off employees, rights of, *v. 26, p. 105.*

Leave of absence for temporary appointment, *v. 24, p. 141.*

Medical leave of absence, included in service computation, *v. 25, p. 118.*

Mental hygiene program, employees of, *v. 25, p. 114.*

Military Credits,

Filing time for, *v. 24, p. 118.*

Terminal date of Korean Emergency, *v. 24, p. 111.*

Used for promotion, *v. 25, p. 114.*

Military preference provisions, retroactivity of amendment to, *v. 25, p. 118.*

Military Service,

Preference for, *v. 25, p. 116.*

Probationary status after, *v. 24, p. 114.*

Seniority credit for, *v. 24, pp. 127, 147.*

When in, *v. 25, p. 88.*

Municipal Employees' Annuity and Benefit Fund, Reenter service, effect on refunds, *v. 26, p. 125.*

Outside employment, *v. 24, pp. 126, 132.*

Payment, for two city jobs, *v. 25, p. 121.*

Police Cadets, *v. 25, p. 30.*

Police Department,

Disability benefits and pregnancy, *v. 26, p. 33.*

Personnel practices in, *v. 26, p. 36.*

Policemen,

Administering polygraph test to, *v. 25, p. 96.*

Psychiatric screening of, *v. 25, p. 90.*

Pregnant employees, management of, *v. 26, p. 65.*

Presidential pardon, effects of, *v. 25, p. 108.*

CIVIL SERVICE—Continued

Probationary employee,

Rights of, *v. 25, pp. 97, 99.*

Right to prior classified status, *v. 24, p. 126.*

Promotion,

Certification of three names, *v. 24, p. 135.*

Generally, *v. 25, p. 100.*

Seniority as a factor, *v. 25, p. 105.*

Seniority as a factor, required, *v. 24, p. 137.*

Reinstatement to available position, leave of absence, *v. 27, p. 62.*

Residence requirements, *v. 24, p. 135.*

Evidence needed for civil service charges, *v. 27, p. 60.*

"Resident" defined, *v. 27, p. 67.*

Salaries, See that Title,

"Seasonal Employees," exempt from, *v. 24, p. 118.*

Sanitarian Registration Act, generally, *v. 26, p. 220.*

Sick leave,

Allowable time, *v. 25, p. 122.*

Regulation of, *v. 25, p. 115.*

See also, Employees of City.

Sick pay, *v. 25, p. 107.*

Suspension,

Effect on claim for wages, *v. 25, p. 101.*

Prevented by prior injury, *v. 25, p. 111.*

Right of appeal, *v. 27, p. 64.*

Withhold promotional certification during, *v. 24, p. 126.*

Teacher Aide and school community representative, examination for, *v. 26, p. 107.*

Unfair employment practice complaint, *v. 26, pp. 108, 109.*

Vacation pay, widow entitled to, *v. 26, p. 110.*

Vacation rights, effect of prior CTA service on computation of, *v. 26, p. 111.*

Veteran's preference,

Military Service, preference for Viet Nam Veterans, *v. 26, p. 114.*

Period of time to furnish proof of, *v. 26, p. 113.*

Preference points, computation for promotion, *v. 26, p. 112.*

Preference points, eligibility of Viet Nam Veterans, *v. 27, p. 65.*

CIVIL SERVICE—Continued

Waiver system, legality of, v. 26, p. 115.

Wrongful removal from employment, v. 26, p. 133.

CIVIL SERVICE COMMISSION

Absence from duty, v. 26, p. 100.

Applications, citizenship required for service in, v. 26, p. 106.

Defense of employee, by Corporation Counsel, v. 25, p. 83.

Fire Department, discrimination in the employment of, v. 26, p. 88.

Plumber's license, examination for, v. 26, p. 294.

Register of eligibles, procedure to determine priority, v. 26, p. 111.

Teacher Aide and School Community Representative, examination for, v. 26, p. 107.

Veteran's preference, period of time to furnish proof of Commission, v. 26, p. 113.

CLAIMS AGAINST CITY

Illegal entry, settlement proposal, v. 27, p. 274.

Immunity, in performing governmental functions, v. 25, p. 477.

Information release, litigation, v. 27, p. 276.

Joinder of parties, collection of past due warrants by City, v. 26, p. 442.

Process, through City Council, v. 25, p. 488.

Settlement with State, v. 27, p. 279.

Subway construction, damages resulting from, v. 26, p. 514.

Sureties, release of, v. 26, p. 458.

Tort Liability,

Defense, v. 27, p. 276.

Employee Acts, v. 27, p. 285.

COMMISSIONER OF BUILDINGS

Permit for Board of Education,

Exempt from Zoning Restrictions, v. 25, p. 583.

COMMISSIONER OF STREETS AND SANITATION

Lighting of Parks and Public Ways, authority over, *v. 25, p. 520.*

Traffic, authority over, *v. 25, p. 440.*

COMMISSIONER OF WATER AND SEWERS

Suspense accounts, *v. 25, pp. 469, 526.*

Water charges, authority over, collection of, *v. 25, p. 527.*

CONDOMINIUMS

Property report requirement, *v. 27, p. 166.*

CONSERVATION AND REDEVELOPMENT

Airport, planned development, *v. 25, p. 611.*

Building inspection, *v. 26, p. 307.*

See Buildings, Department of

Chicago Land Clearance Commission, *v. 25, p. 64.*

City Council, jurisdiction of, *v. 25, p. 7.*

Community Conservation Board,

Area financing, F.H.A., procedures for, *v. 24, p. 219.*

Conservation Act, lien provisions of, *v. 24, p. 218.*

Hatch Act, application to employees of, *v. 24, p. 220.*

Hyde Park-Kenwood Project, *v. 24, p. 93; v. 25, p. 534.*

Land Acquisition by, *v. 24, p. 93.*

Members, political affiliation of, *v. 24, p. 100.*

Procedure for acquisition, *v. 25, p. 68.*

Rehabilitation financing, F.H.A., procedure for, *v. 25, p. 189.*

Relocation of persons, agreement for, *v. 24, p. 216.*

Taxes on property acquired, *v. 24, p. 680.*

Conservation Area, Factors in designating, *v. 24, p. 216.*

Conservation Community Council, number of members to constitute quorum, *v. 26, p. 161.*

Court, Jurisdiction over, *v. 25, p. 7.*

Demolition of dilapidated garages, *v. 26, p. 302.*

Development Ordinance, *v. 25, p. 1.*

Federal Loans, for Urban renewal, *v. 26, p. 154.*

Grant, What constitutes action sufficient to earn, *v. 26, p. 163.*

Neighborhood Development Program, Authority to proceed in, *v. 26, p. 169.*

CONSERVATION AND REDEVELOPMENT—Continued

Neighborhood Facilities Grant, Use for Garfield Park Community Service Center, *v. 26, p. 155.*

Planned Development, business, change in use, *v. 26, p. 342.*

Private redevelopment, capital and financing requirement, *v. 26, p. 177.*

Redevelopment of properties, restrictions, *v. 26, p. 346.*

Urban Renewal,

Appraisals, valuation and discovery, *v. 26, p. 159.*

Compliance of redevelopment plan to HUD standards, *v. 26, p. 175.*

Consolidation Act, contracts subject to, *v. 26, p. 483.*

Deconversions of buildings, treatment of, *v. 24, p. 466.*

Displacement of small business, compensation for, *v. 24, p. 728.*

Funds, relocation of, *v. 25, p. 217.*

F.H.A., contract for loans and grant under, *v. 24, p. 213.*

Loan application, conflict of interest, *v. 26, p. 166.*

Medical center, *v. 25, p. 509.*

Mortgage note, authority of City to execute, *v. 26, p. 167.*

Planned development, defined, *v. 25, p. 82.*

Planned development, restrictions on, *v. 26, p. 162.*

CONSOLIDATION

City of Chicago, Chicago Park District, Board of Education, *v. 24, p. 229.*

**CONSUMER SALES, WEIGHTS AND MEASURES,
DEPARTMENT OF**

Individual price markings, deviation from, *v. 27, p. 117.*

Powers and duties, defined, *v. 26, p. 70.*

CONTRACTORS

Additional charges, interpretation to justify, *v. 25, p. 562.*

Additional compensation, *v. 25, p. 544.*

Additional compensation, requirement for, *v. 25, p. 569.*

Assignment or subcontract by original contractor, *v. 26, p. 482.*

Bid Condition, Affirmative action, *v. 27, p. 325.*

CONTRACTORS—Continued

- Cancellation of, penalties, *v. 27, p. 329.*
- City Liability, Actions of Contractors, *v. 27, p. 277.*
- Civil Liability, City role, *v. 27, p. 282.*
- Concrete, licensing of, *v. 24, p. 422.*
- Criminal liability of wrecking company, *v. 26, p. 301.*
- Demolition, obligation when City is unable to perform, *v. 25, p. 349.*
- Electrical Contracting, Licensing of, *v. 27, p. 159.*
- Employees of, subject to Employer's Expense Tax, *v. 27, p. 258.*
- Engineers, licenses out of state, *v. 26, p. 285.*
- Extra compensation for additional materials, computation of, *v. 25, p. 567.*
- Fair Labor Standard Act, reimbursement by City for additional expenditures, *v. 26, p. 153.*
- Final Payment, Bond in Lieu of, *v. 27, p. 344.*
- General conditions for construction contracts, comments on, *v. 26, p. 484.*
- Insurance, liability, *v. 25, p. 546.*
- Liability for inspections, *v. 25, p. 546.*
- Lien against Public Funds, *v. 27, p. 272.*
- Mason, licensing concrete contractors as, *v. 24, p. 422.*
- Payments after Bankruptcy, *v. 27, p. 270.*
- Payment to trustee, after bankruptcy has been declared, *v. 25, p. 488.*
- Pay-outs to, by City, *v. 25, p. 509.*
- Performance bonds,
 - Must cover all specification, *v. 25, p. 540.*
 - Required, *v. 26, p. 489.*
- Plumber's bond and registration requirements, *v. 26, p. 293.*
- Plumber's Act, constitutionality of, *v. 26, p. 294.*
- Private watch service, Theft loss liability, *v. 27, p. 341.*
- Purchasing Agent, relations with, upon faulty performance, *v. 25, p. 590.*
- Reimbursement for additional expenditures after change order approved, *v. 25, p. 591.*
- Rejection of Bid, past performance, *v. 27, p. 332.*
- Retention monies, payment of, *v. 27, p. 349.*
- Retention of payment, original work, *v. 27, p. 266.*
- Tax Levy releases, lien claims, *v. 27, p. 267.*
- Waivers, Bond in lieu of, *v. 27, p. 343.*

CONTRACTS

See also Purchasing Agent

Additional charges, interpretation to justify, *v. 25, p. 562.*

Additional Work,

Defined, *v. 25, p. 572.*

Payments for, *v. 25, p. 569.*

Adjustments, *v. 25, p. 544.*

Adjustments, damage to Auto trade-in, *v. 24, p. 716.*

Airlines, Right to sublease space at O'Hare, *v. 26, p. 509.*

Airport Concessions, termination of, *v. 27, p. 345.*

Airport engineering management and supervision charges, assessment of, *v. 26, p. 499.*

Ambiguity,

Resolved, effect of, *v. 25, p. 570.*

Resolving, *v. 25, p. 557.*

Assigning or subletting provision required, *v. 25, p. 575.*

Assignment vs. subcontract of a proposed professional service contract, *v. 26, p. 482.*

Assignment and subletting provisions, deviation waived, *v. 26, p. 481.*

Authority of City department to contract with Federal government, *v. 27, p. 100.*

Award, responsibility of bidder, *v. 26, p. 473.*

Bids,

See Bids and Awards

Deposit, refund of, *v. 26, p. 479.*

Effect of deviation in procedure, *v. 26, p. 474.*

Explanation subsequent to opening, *v. 26, p. 475; v. 27, p. 331.*

Lowest, accompanying deposit, *v. 26, p. 474.*

Price reduction, after opening, *v. 27, p. 333.*

Rejection of, *v. 25, p. 545.*

Right to reject all, *v. 26, p. 491.*

Withdrawal of, *v. 25, p. 551; v. 26, p. 416.*

Withdrawal of, mistake as cause for equitable rescission, *v. 26, p. 478.*

Withdrawal of, with unilateral mistake after opening of, *v. 26, p. 477.*

Bid Specifications, "brand name or equal," *v. 25, p. 542.*

Bid Specifications, variance from, *v. 25, p. 549.*

Cancellation by mutual consent, *v. 24, p. 709.*

Cancellation of penalties, *v. 27, p. 329.*

CONTRACTS—Continued

- Change order, quantum meruit basis, *v. 25, p. 552.*
- Chicago Public Library, Lease for, *v. 27, p. 55.*
- City Electrical Bureau, Contract offer, *v. 27, p. 335.*
- City Property, sale of, *v. 27, p. 307.*
- Collusion, bid disqualification, *v. 27, p. 335.*
- Completion time, on public improvement, *v. 25, p. 549.*
- Compliance certificate required, dwelling structures sold on installments, *v. 26, p. 308.*
- Contract compliance, monies reserved to ensure payment of, *v. 26, p. 482.*
- Comptroller's responsibilities in execution, *v. 24, p. 693.*
- Conditional sales of motor vehicles, *v. 25, p. 245.*
- Conflict of Interest,
 - Municipal officers, *v. 27, p. 377.*
 - Professional Services, *v. 27, p. 378.*
- Construction materials exempted from tax, *v. 25, p. 447.*
- "Cost-Plus" contracts, *v. 26, p. 483.*
- Deductions, for variations, *v. 25, p. 619.*
- Delay, provisions relative to, *v. 25, p. 578.*
- Delivery, F.O.B., *v. 25, p. 572.*
- Demolition,
 - Emergency, procedure for, *v. 24, p. 716.*
 - Liability of City when unable to turn property over for, *v. 25, p. 349.*
- Electrical service, billings, *v. 27, p. 350.*
- Emergency contracts, purchasing agent's authority under, *v. 25, p. 597.*
- Employment preference, *v. 25, p. 560.*
- Equitable rescission, *v. 25, p. 540.*
 - Mistake, *v. 25, p. 543.*
- Errors, Removal of, *v. 25, p. 539.*
- Estoppel,
 - Certificate execution, *v. 27, p. 348.*
 - Ordinance validity challenge, *v. 27, p. 5.*
- Extension of time for performance, *v. 25, pp. 553, 578.*
- Extensions, Notification required for, *v. 25, p. 578.*
- Extras, City Council authority over, *v. 25, p. 11.*
- Fair-employment clause, *v. 25, p. 561.*
- Federal Housing Act, loans and grants under, *v. 24, p. 213.*
- Final Waivers, Bond in Lieu of, *v. 27, p. 344.*
- Fluorine, purchase of, *v. 25, p. 451.*
- Garbage removal, authority to let, *v. 24, p. 712.*

CONTRACTS—Continued

Gas Company, service at Western Avenue Pumping Station, legality of, v. 26, p. 495.

General Conditions,

Changes after award, v. 26, p. 480; v. 27, p. 326.

For construction contracts, comments on, v. 26, p. 484.

Interpretations, v. 25, p. 579.

Illinois Municipal Code, amendments to contract provisions, v. 26, p. 490.

Implied contracts, v. 25, p. 565.

Indemnification of City, example of agreement for, v. 26, p. 487.

Interpretation of terms, additional clauses contradicting counteroffer, v. 25, p. 538.

Janitorial services for health center, v. 26, p. 59.

Judgments, v. 25, p. 552.

Labor Costs, escalation of, v. 27, p. 353.

Landing fee agreements, renegotiation of, v. 27, p. 370.

Lease,

Chicago Public Library, v. 27, p. 54.

Purchasing, v. 25, p. 574.

Renewal of, v. 26, p. 464.

Length of obligation, v. 25, p. 571.

Lien against public funds, procedure, v. 26, p. 488.

Liquidated claims, v. 25, p. 486.

Liquidated damages, v. 25, pp. 553, 554, 576.

Circumstance justifying, v. 25, p. 554.

Legality of provision for, v. 24, p. 708.

Maximum, v. 25, p. 576.

Lowest responsive bidder, food services, v. 27, p. 333.

Maintenance, defined, v. 25, p. 562.

Materials, payment after engineer's approval, v. 25, p. 567.

Materials or services, rejection of, v. 25, p. 594.

Memorandum of understanding, design phase, Public Building Commission, v. 27, p. 375.

Minimum Rent Abatement, v. 27, p. 301.

Mistake,

Corrected by other expressions, effect of, v. 25, p. 566.

On face, v. 24, p. 686.

Removal of, v. 25, p. 539.

Model Cities, v. 26, p. 167.

Non-discrimination clause, v. 25, p. 561.

Notary Public jurat, requirement for, v. 24, p. 691.

CONTRACTS—Continued

- OSHA Compliance, Public Buildings, *v. 27, p. 380.*
- Parking facility operation, Assignment of, *v. 27, p. 299.*
- Parking meter maintenance, *v. 24, p. 717.*
- Payment, to trustee for bankrupt, *v. 25, p. 469.*
- Pay-outs to contractors, *v. 25, p. 497.*
- Performance bonds,
 - City Personal, *v. 27, p. 375.*
 - Not an operating cost, *v. 24, p. 711.*
 - Required, *v. 26, p. 489.*
- Personal service contracts, requirements of form, *v. 26, p. 489.*
- Planned Development Ordinance, modification, *v. 27, p. 195.*
- Price, cubic yard as unit basis, *v. 25, p. 558.*
- Price adjustment, option agreement, *v. 27, p. 340.*
- Price and work quantity, option to increase, *v. 24, p. 710.*
- Price escalation, availability of, *v. 27, p. 338.*
- "Price Fixing" in the sale of books to public bodies, *v. 26, p. 94.*
- Price increases, Contract term, *v. 27, p. 342.*
- Price increases, rising costs, *v. 27, p. 325.*
- Private enterprise, entering into by City, *v. 25, p. 33.*
- Private watch service, Breach, *v. 27, p. 344.*
- Product endorsement prohibited, *v. 27, p. 23.*
- Public works, *v. 25, p. 595.*
- Radiology, associates in, legality of, *v. 26, p. 487.*
- Registration number required, *v. 26, p. 496.*
- Reimbursement Costs, Allowable, *v. 27, p. 346.*
- Rejection of award, waiver of, *v. 27, p. 336.*
- Rent collection, mistake by City, *v. 26, p. 464.*
- Resolved ambiguity, no grounds for rejection, *v. 25, p. 570.*
- Retailer's Occupation and Use Tax, required in contract specifications, *v. 25, p. 537.*
- Retailer's Occupational Tax, exemption from, *v. 24, p. 609.*
- Retained funds, delay by city, *v. 27, p. 345.*
- Retainer fees,
 - Contractor's request for percentage back, *v. 26, p. 496.*
 - Withholding, final payment to contractor, *v. 26, p. 496.*
- Retention of Funds, lien claims, *v. 27, p. 340.*
- Retention monies, Release of, *v. 27, p. 349.*
- Retention of Payment, Original Work, *v. 27, p. 266.*
- Seal, Notarial and corporate, need for, *v. 24, p. 691.*
- Service contracts, vital provisions, *v. 26, p. 497.*
- Services not used, payment for, *v. 26, p. 490.*

CONTRACTS—Continued

Sludge, expiration of, *v. 27, p. 346.*

Sole source procurement, *v. 26, p. 481.*

Special contracts, *v. 25, p. 574.*

Subcontractor Claim, settlement of, *v. 27, p. 348.*

Taxicab insurance, sample contracts, *v. 25, p. 274.*

Tax payments, leased property, *v. 27, p. 352.*

Termination in subsequent fiscal year, *v. 25, p. 573.*

Title, as effected by F.O.B. delivery, *v. 25, p. 572.*

Unit price payment basis, *v. 24, p. 711.*

Urban Renewal Consolidation Act, loans and grants under,
v. 26, p. 483.

Urban Renewal, rental units, *v. 27, p. 351.*

Waiver, Bond in Lieu of, *v. 27, p. 343.*

Water supply

Contract beyond City limits, *v. 26, p. 468.*

To suburban municipalities, legality of, *v. 26, p. 469.*

West Side Subway track work, *v. 24, p. 694.*

CORPORATION COUNSEL

Church, Defined by prior opinions, *v. 25, p. 363.*

Civil Defense workers, no duty to defend, *v. 24, p. 84.*

Compensation for legal services, *v. 27, p. 50.*

Costs, Allocated to parking facility revenue, *v. 25, p. 465.*

Defense of employee, before Civil Service Commission, *v. 25,*
p. 83.

Legal extern requirements, *v. 27, p. 51.*

Municipal Code amendments, publication of, *v. 24, p. 110.*

Parking facility funds, use of, *v. 25, p. 473.*

Police, certification of indemnification, *v. 25, p. 79.*

Police accident reports, need for, *v. 24, p. 42.*

Public Utilities Rate Cases, intervention of city, *v. 27, p.*
214.

Special assistant, pension fund eligibility, *v. 24, p. 209.*

Withdrawal of counsel in pending litigation, *v. 27, p. 76.*

Witness Expenses, *v. 27, p. 284.*

CORPORATIONS

Age minimum for officers, *v. 27, p. 132.*

Criminal liability, *v. 26, p. 301.*

Licensing of automatic amusement devices, *v. 27, p. 147.*

Not-for-profit corporations, senior citizens groups as, *v. 26,*
p. 95.

CORRECTIONS, DEPARTMENT OF**Employees,**

Immune from liability, *v. 25, p. 62.*

Outside employment, *v. 26, p. 74.*

Fines, rate paid for working out, *v. 24, p. 645.*

Firearms, correctional officers carrying, *v. 25, p. 78; v. 26, p. 71*

Garnishment against City to satisfy inmate's debts, *v. 26, p. 442.*

Guards, weapons and uniforms for, *v. 24, p. 109.*

Insignia of employees, *v. 25, p. 85.*

Municipal Fund refunds for employees, *v. 26, p. 129.*

Prisoners

Receiving, *v. 25, p. 69.*

Rights in relation to negotiable instruments, *v. 25, p. 79.*

Private use of public facilities prohibited, *v. 25, p. 86.*

Sale of inmate produced articles, *v. 24, p. 106.*

South boundary, *v. 26, p. 73.*

Uniforms, regulating use of, *v. 24, p. 82.*

Week-end incarceration, legality of, *v. 24, p. 87.*

Work-release, *v. 26, p. 71.*

Work-release prisoner, arrest of, *v. 26, p. 27.*

COUNTY OF COOK

Expressway bonds, use of, *v. 24, p. 657.*

COUNTY TREASURER

Protest funds, authority over, *v. 25, p. 463.*

D**DAMAGES**

Liquidated, when justified, *v. 25, pp. 553, 554, 576.*

Sludge disposal, riparian owners, *v. 27, p. 288.*

DAY CAMP

Licensing regulations, *v. 26, p. 276.*

DAY CARE CENTER

Defined, *v. 25, p. 323.*

Outdoor play areas, requirements for licensing, *v. 26, p. 49.*

Revocation or denial of license, grounds for, *v. 26, p. 276.*

DAY NURSERIES

Medical examination, requirement, *v. 24, p. 64.*

Outdoor play areas, requirements for licensing, *v. 26, p. 49.*

Play area, minimum requirement, *v. 24, p. 272.*

DEDICATION OF STREETS AND ALLEYS

Prerequisite for paving by City, *v. 25, p. 408.*

"Sale and Error," correction of mistake in easement by, *v. 25, p. 408.*

DEMOCRATIC CONVENTION OF 1968

Demonstration at residence of Mayor, *v. 26, p. 45.*

News media members, alleged assault by police officers, *v. 26, p. 45.*

DEPARTMENT OF CITY PLANNING

See Development and Planning, Department of, Grants, accepting, *v. 25, p. 449.*

DEPARTMENT OF PERSONNEL

Change of name, legal requirements, witness fees, *v. 27, p. 75.*

DETECTIVE

Advertising prohibited without license, *v. 25, p. 318.*

Carrying firearms, *v. 25, p. 315.*

License for, *v. 25, p. 318; v. 26, p. 281.*

Weapons, carried by, *v. 25, p. 225.*

DEVELOPMENT AND PLANNING, DEPARTMENT OF

Acquisition of property, *v. 27, p. 306.*

Airport matters, holding of public hearings on, *v. 26, p. 506.*

Airport taxiway construction, public hearings, *v. 26, p. 506.*

DEVELOPMENT AND PLANNING—Continued

- Annexation of east bank of North Shore Channel, v. 26, p. 462.
- Authority of Commissioner to execute forms, v. 26, p. 74.
- Grants, accepting, v. 25, p. 449.
- Invasion of privacy, photographs, v. 27, p. 293.
- Land-use restriction zone, airport, proposed stadium, v. 27, p. 196.
- Loading platforms, exclusive use of, v. 27, p. 228.
- Ownership requirement, application, v. 27, p. 182.
- Planned Development—See that Title, v. 26, p. 345.
- Proposed construction, untimely notice, v. 27, p. 388.
- Repossessed HUD property, acquisition authority, v. 27, p. 7.
- Auctioneers license, residency requirement, v. 27, p. 152.

DISCRIMINATION

- Fair Housing Ordinance, grant of authority, v. 27, p. 105.
- Federal Anti-Discrimination Review, v. 26, p. 152.
- Job application, legality of inquiries regarding convictions, v. 27, p. 61.
- Non-duty disability benefits for pregnancy, v. 27, p. 13.
- Prohibition of children as lease condition, legality of, v. 27, p. 107.
- Public places, civil rights violation, v. 27, p. 126.

DOGS

- Biting, confinement period, v. 26, p. 210.
- Impounding of, v. 25, p. 46.
- Licensing of dogs, v. 26, p. 282.
- Police dogs,
Retired, procurement of insurance by donee of, v. 26, p. 28.
- Disposal of retired animals, v. 26, p. 29.
- Raising, as a hobby, v. 24, p. 400.
- Veterinarian for Board of Health, v. 24, p. 67.

DRIVEWAYS

- Chicago Transit Authority, under jurisdiction of, v. 25, p. 403.
- Fee,
Attaches to property, v. 25, p. 531; v. 26, p. 415.

DRIVEWAYS—Continued

Union Station, v. 24, p. 646.

Permit fees, in general, v. 26, p. 283.

Permit requirement, retroactive application of, v. 26, p. 284.

Permits,

Jurisdiction over, v. 24, p. 423; v. 25, p. 325.

Michigan Avenue, v. 25, p. 413.

Repair on private property, consent and release required, v. 25, p. 421.

Service drive, defined, v. 25, p. 436.

DUMPING

Owner liable for nuisance, v. 24, p. 273.

E**EDUCATION, BOARD OF**

Appointment requirements, v. 27, p. 48.

Board members, payment of cost of elections of, v. 26, p. 413.

Bonds, replacement of, v. 27, p. 297.

Chicago City Junior College employees, pension rights, v. 25, p. 144.

Consolidation with City of Chicago and Chicago Park District, v. 24, p. 229.

Employees, non-teaching, v. 25, p. 113.

Health examination of school children, v. 26, p. 58.

Inspection fees, exemption from, v. 26, p. 306.

Luncheon attendants, classification by Civil Service Commission, v. 26, p. 148.

Policemen's Annuity, effect of prior status in Board of Education on, v. 25, p. 170.

Segregation, v. 26, p. 75.

Sprinkling system in schools, v. 25, p. 73.

Warrants, liability for stolen, v. 26, p. 448; v. 26, p. 499.

Zoning Exemption from, v. 24, p. 289; v. 25, p. 383.

ELECTIONS

Alcohol sales by private club in "dry" precinct, v. 26, p. 240.

ELECTIONS—Continued

- Board of Commissioners, Employee, retired policemen as, v. 24, p. 289.
- Contest, Aldermanic, jurisdiction over, v. 24, p. 13.
- Fluoridation referendum, need for, v. 24, p. 5.
- Local Option,
 - Modification of, v. 24, p. 271.
 - Procedure for referendum, v. 26, p. 236.
- Posters, prima facie evidence of responsibility for, v. 24, p. 567.
- Referendum to prohibit taverns, v. 26, p. 240.
- Retail sales prohibition, referendum, v. 27, p. 128.
- Special elections, closing of taverns for, v. 26, p. 239.
- State elections, closing of liquor premises during, v. 26, p. 209.
- Voting machines,
 - Insurance coverage, v. 24, p. 628.
 - Fire insurance, v. 27, p. 328.

ELECTRIC CURRENT AND EQUIPMENT

- Equipment, definition of, v. 25, p. 344.
- Exemption from regulation, v. 27, p. 165.
- Underground distribution system, acquisition of, v. 27, p. 213.

EMINENT DOMAIN

- Airport taxiways, construction of, v. 26, p. 506.
- Air rights, obligation of highway agencies to pay for use of, v. 26, p. 375.
- Compensation for fixtures, v. 26, p. 463.
- Compensation,
 - Prior repairs, v. 26, p. 463.
 - Damages as result of subway construction, v. 26, p. 514.
- Crosstown Expressway, acquisition of property for, v. 26, p. 510.
- Fair Market Value, comparable sales, v. 27, p. 290.
- Land acquisition procedure, v. 26, p. 93.
- Mortgage prepayment penalty, refund from city, v. 26, p. 168.
- Right-of-way, acquisition procedure, v. 26, p. 99.
- Sherman House Hotel, acquisition of, v. 27, p. 317.

EMPLOYEES OF CITY

Absenteeism, effect of, *v. 25, p. 100.*

Alderman, contribution to Municipal Employees Benefit Fund, *v. 26, p. 100.*

Annuitant, performing part-time services, *v. 25, p. 132.*

Application, falsification on, *v. 25, p. 87.*

Arrest record, effect on application for employment, *v. 26, p. 101.*

Artists working within fine arts Council Programs, *v. 27, p. 72.*

Auto liability insurance requirement, *v. 26, p. 466.*

Back salary, assignment of claims to, *v. 25, p. 124.*

Back salary, veteran's right on reinstatement, *v. 27, p. 70.*

Benefit hearing decisions, administrative review, *v. 27, p. 93.*

Chicago City Junior College, rules governing, *v. 26, p. 104.*

Chicago Public Library employees, annuity program for, *v. 26, p. 93.*

Chicago Rapid Transit Company, annuity credit for service to, *v. 26, p. 126.*

Child labor laws, hiring of minors, *v. 27, p. 78.*

Civil Service,

 Citizenship required for, *v. 26, p. 106.*

 Waiver system, legality of, *v. 26, p. 115.*

 Wrongful removal, *v. 26, p. 133.*

Classification,

 After permanent separation from Civil Service, *v. 25, p. 113.*

 Chief operating engineer, *v. 27, p. 68.*

Compensation for period of inactive status, *v. 27, p. 38.*

Conflict of Interest,

 Employees acquisition of property, *v. 26, p. 300.*

 Foster home house parent, *v. 27, p. 76.*

 Professional service contracts, *v. 27, p. 378.*

 Simultaneous public/private sector positions, *v. 27, p. 56.*

 Urban Renewal loan applications, *v. 26, p. 166.*

Corrections employees, outside employment, *v. 26, p. 74.*

Credit complaints against employees, *v. 27, p. 63.*

Crossing guards, status for vacation and sick leave, *v. 24, p. 122.*

Debt, refund to pay, *v. 25, p. 103.*

EMPLOYEES OF CITY—Continued

Deceased employee, disposition of earned wages, *v. 27, p. 79.*

Disability payments, one-year requirement, *v. 26, p. 123.*

Discharge for "cause", *v. 25, p. 103.*

Accumulated vacation pay, *v. 27, p. 77.*

Discharge orders for policemen, *v. 27, p. 26.*

Discipline for "cause", *v. 25, p. 88.*

Discipline for misconduct, *v. 27, p. 66.*

Disclosure of economic interest, *v. 26, p. 31.*

Discrimination, review, *v. 26, p. 152.*

Dog-repellent spray, use of, *v. 27, p. 109.*

Efficiency rating and work record, review of, *v. 26, p. 122.*

Employment, in two City departments, *v. 25, p. 121.*

Federal funds, paid by, *v. 25, p. 119.*

Federal youth program employees, *v. 27, p. 59.*

Fire Department, minority hiring in the, *v. 26, p. 87.*

Fire-fighting operations, tort immunity for, *v. 26, p. 86.*

Firemen,

Disciplinary board, rights, *v. 26, p. 89.*

Discrimination in the employment of, *v. 26, p. 88.*

Killed on duty, salaries of, *v. 26, p. 119.*

Moonlighting, prohibition against, *v. 26, p. 32.*

Firemen's Annuity and Benefit Fund—See that title, *v. 26, p. 134.*

Hatch Act, application of, *v. 24, p. 220.*

Health insurance for widows of killed firemen and policemen, *v. 26, p. 142.*

Hospitalization insurance as taxable income, city payment of, *v. 26, p. 119.*

Hourly rate, set by appropriation ordinance, *v. 25, p. 11.*

Indemnification for losses in City Hall fire, *v. 25, p. 480.*

Injured out of City Limits, rights of, *v. 24, p. 55.*

Job application, inquiry regarding convictions, *v. 27, p. 61.*

Job performance evaluation, *v. 27, p. 60.*

Laborers and Retirement Board Employees' Annuity and Benefit Fund—See that title, *v. 26, p. 148.*

Labor union, right to join, *v. 25, p. 43.*

Labor union agreements, city policy regarding, *v. 27, p. 66.*

Laid-off civil service employees, right of, *v. 26, p. 105.*

Legal externs, *v. 27, p. 51.*

Liability for, *v. 27, p. 283.*

EMPLOYEES OF CITY—Continued

- Librarians, revision of classification plan, v. 27, p. 71.
- Malpractice, liability for, v. 26, p. 63.
- Medical leave of absence, included in service computations, v. 25, p. 118.
- Military credit, used for promotion, v. 25, p. 114.
- Military Service,
 - Preference for, v. 25, p. 116.
 - What constitutes, v. 25, p. 88.
- Municipal Employees Annuity and Benefit Fund, re-enter service, effect on refunds, v. 26, p. 125.
 - Mandatory participation, v. 27, p. 83.
- Municipal Tuberculosis Sanitarium,
 - Hiring, v. 25, p. 58.
 - Liability for injuries, v. 25, p. 56.
 - Physicians, liability for injuries, v. 26, p. 64.
 - Vacation time allowable, v. 26, p. 63.
- Non-duty disability benefits for pregnancy, v. 27, p. 13.
- Non-Teaching employees under Board of Education, v. 25, p. 113.
- Outside Employment, v. 24, p. 132.
- Overtime, disciplinary action for refusal of, emergency, v. 27, p. 69.
- Overtime Compensation,
 - For Youth Welfare Commission Employees, v. 25, p. 127.
 - Legality of, v. 24, p. 150.
 - Right to, v. 25, p. 128.
- Pay, deceased, common-law wife, right to, v. 26, p. 117.
- Paychecks cashed on forged endorsements, liability of city for, v. 26, p. 118.
- Paychecks, liability of City for stolen, v. 26, p. 119.
- Pensioner as employee, legality of, v. 24, p. 141; v. 26, p. 120.
- Pension, amount of, v. 25, p. 134.
- Pension Funds, purchase of real property by, v. 26, p. 435.
- Police, Department of, disability benefits and pregnancy, v. 26, p. 33.
- Policemen,
 - Labor Unions, v. 24, p. 25.
 - Moonlighting, rules governing, v. 26, p. 32.
- Pregnant employees, management of, v. 26, p. 65.

EMPLOYEES OF CITY—Continued

Presidential pardon, effects on Civil Service status, *v. 25, p. 108.*

Promotion, *v. 25, p. 100.*

Proposal to reimburse wages unpaid during Depression, *v. 27, p. 16.*

Qualified bidders on sale of City property, *v. 27, p. 78.*

Reinstatement to available position, leave of absence, *v. 27, p. 62.*

Residence requirements,

Generally, *v. 24, p. 135.*

Police Board members, *v. 24, p. 53.*

Policemen, *v. 24, p. 51, p. 135.*

"Resident" defined, *v. 27, p. 67.*

Retroactive raises for retired employees prohibited, *v. 25, p. 131.*

Salaries,

Compensation after 6 P.M., *v. 26, p. 122.*

Computation of, *v. 25, p. 123.*

Salary Payment, method of, *v. 25, p. 127.*

Sanitarian Registration Act, generally, *v. 26, p. 220.*

Sculptures, artists, *v. 27, p. 292.*

Seniority, effects on promotion, *v. 25, p. 105.*

Sick leave,

See also Civil Service.

Allowable time, *v. 25, p. 122.*

Payments after death, *v. 24, p. 144.*

Regulations of, *v. 25, p. 115.*

Sick pay, *v. 25, p. 107.*

Subpoena of City Comptroller, *v. 27, p. 46.*

Suspension prevented by prior injury, *v. 25, p. 111.*

Suspension, right of appeal, *v. 27, p. 64.*

Tort liability of, *v. 24, p. 653.*

Transfer of Employees from Park District to Bureau of Streets, retirement requirements governing, *v. 25, p. 209.*

Unemployment compensation claim, *v. 27, p. 68.*

Unfair employment practice complaint, *v. 26, p. 108, p. 109.*

United States Savings Bond program, *v. 26, p. 117.*

Unused vacation days, compensatory time, compensation for, *v. 27, p. 63.*

Vacation pay, *v. 25, p. 123.*

EMPLOYEES OF CITY—Continued

Vacation pay,

Effect of retirement on, v. 26, p. 110.

Widow entitled to, v. 26, p. 110.

Vacation rights of annuitant, v. 24, p. 149.

Vacation rights, effect of prior CTA service on computation of, v. 26, p. 111.

Vacations and sick leave, accrued, v. 26, p. 121.

Veterans, Civil Service preference to be given to Viet Nam veterans, v. 26, p. 114.

Veterans' preference points, computation for promotion, v. 26, p. 112.

Veterans, Viet Nam, preference point eligibility, v. 27, p. 65.

Wage assignments, v. 24, p. 152.

Withdrawal of corporation counsel in pending litigation, v. 27, p. 76.

Workmen's compensation claim, concurrent sick pay claim, v. 27, p. 74.

Workmen's compensation claim, subrogation, v. 27, p. 71.

ENVIRONMENTAL CONTROL, DEPARTMENT OF

Air conditioners,

In general, v. 26, p. 204.

Installation and regulation, v. 26, p. 204.

Air Pollution, fines—maximum, v. 26, p. 75.

Air Quality Act of 1967, v. 26, p. 76.

Combustion Boilers, regulation of, v. 27, p. 220.

Harbor Pollution Control, v. 26, p. 78.

Harbor Pollution control ordinance, enforcement of, v. 26, p. 77.

Noise Pollution, reporting of, v. 27, p. 238.

Sanitary land bill, jurisdiction over application for, v. 26, p. 325.

U.S. Environmental Protection Agency, policy of cooperation, v. 27, p. 98.

Water Pollution, phosphate ordinance, v. 26, p. 79.

EXPLOSIVES

Transportation by truck, regulations, v. 24, p. 267.

EXPRESSWAYS

- City vehicle, use of flags and flares, *v. 25, p. 436.*
- Construction—Transportation Bond Act, *v. 26, p. 460.*
- Crosstown,
 - Acquisition of property for purpose of, *v. 26, p. 510.*
 - Authority to construct, *v. 27, p. 95.*
- Federal highway to pass over Illinois Central Railroad Company land, *v. 26, p. 513.*
- Kennedy Rapid Transit, right-of-way acquisition, *v. 26, p. 99.*
- Repairs before location is accepted, responsibility for, *v. 26, p. 512.*
- Signs, located near, *v. 25, p. 423.*
- Variations in grading allowed, *v. 25, p. 619.*

F**FAIR EMPLOYMENT PRACTICES COMMISSION**

- Unfair employment practice complaint, *v. 26, p. 108, p. 109.*

FEDERAL GOVERNMENT

- Air cargo rate discrimination, *v. 27, p. 99.*
- Anti-Discrimination Review, *v. 26, p. 152.*
- Authority of City Department to contract with, *v. 27, p. 100.*
- Buildings, Immunity from Municipal Code regulations, *v. 26, p. 153.*
- Community development funds, use for emergency repair, *v. 27, p. 172.*
- Conflict of interest in the acquisition of land by local employee, *v. 26, p. 300.*
- Conflict of interest, professional service contracts, *v. 27, p. 377.*
- Congressional resolution, termination of war, veteran's preference points, *v. 27, p. 65.*
- Copyright Act of 1976, *v. 27, p. 72.*
- Crosstown expressway, authority to construct, *v. 27, p. 95.*
- Decontrol of rent-a-car charges, FTC order, *v. 27, p. 369.*
- Employers Expense Tax, federal employee exemption, *v. 27, p. 257.*
- Enforcement of Copyright Laws, city role, *v. 27, p. 23.*

FEDERAL GOVERNMENT—Continued

- F.A.A. proposed runway construction, city objection, v. 27, p. 374.
- Fair Labor Standards Act, application of, v. 26, p. 153.
- F.B.I., application of parking tax ordinance to, v. 26, p. 156.
- Federal funds, statutory authority for receipt of, v. 27, p. 5.
- Federal Mass Transportation Grant Application, v. 27, p. 100.
- Gun registration invalid, National Firearms Act, v. 27, p. 109.
- Housing Act of 1965, refund from City for mortgage prepayment penalty, v. 26, p. 168.
- Housing and Community Development Act of 1974, v. 27, p. 106.
- Littering laws, constitutional limits, handbills, v. 27, p. 240.
- Management of Grant Applications, v. 27, p. 273.
- Microwave transmitter, FCC license, v. 27, p. 158.
- OSHA Compliance, public buildings, v. 27, p. 380.
- Privacy Act, disclosure of police records to Federal agency, v. 27, p. 103.
- Real estate settlement procedures, disclosure to home buyers and sellers, v. 27, p. 107.
- Religious solicitation, restrictions on, v. 27, p. 239.
- Viet Nam Era Veterans' Readjustment Assistance Act, right to back pay, v. 27, p. 70.
- Violation of Federal Law, police arrest authority, v. 27, p. 22.

FEEES**Airport,**

Landing fees, non-revenue flights, v. 26, p. 502.

Parking aircraft at, v. 25, p. 606.

Automatic amusement device, fee for, v. 25, p. 298.

Building permit fees, waiver of, v. 26, p. 313.

Cigarette dealer, license fee, v. 27, p. 154.

Drainlayers, v. 25, p. 74.

Driveway permit, in general, v. 26, p. 283.

Driveway,

Applicable to C.T.A., v. 25, p. 397.

Fee attaches to property, v. 25, p. 531; v. 26, p. 415.

FEES—Continued

Chicago Transit Authority, *v. 25, p. 403.*

Permits for C.T.A., *v. 25, p. 401.*

Union Station, *v. 24, p. 646.*

Federal exemption from landing fee, *v. 25, p. 603.*

Hospital services, *v. 25, p. 50.*

Inspection, coin-operated laundries, *v. 26, p. 423.*

Inspection fees,

Exemption of Board of Education from, *v. 26, p. 306.*

Public building, liability for, *v. 27, p. 161.*

Inspections,

Contractors liability for, *v. 25, p. 559.*

Exemption by council order, *v. 24, p. 397.*

Responsibility for, *v. 25, p. 329.*

Jury, Authority over, *v. 25, p. 4.*

Landing,

See also Airports.

Exemption for University of Illinois, *v. 25, p. 601.*

Schedule for, *v. 25, p. 599.*

Licenses, food dispenser's charitable institution, *v. 26, p. 277.*

License, for wholesale drug chemical and patent stores, *v. 25, p. 303.*

Loading zone fee, *v. 26, p. 385.*

Machine shop, licensing fee, *v. 26, p. 289.*

Motor vehicle license, refund of, *v. 26, p. 259.*

Parking, not waivable except by council actions, *v. 25, p. 481.*

Refunds,

City Policy, *v. 26, p. 296.*

Of building fee for charitable institutions, *v. 25, p. 348.*

On liquor license fees, *v. 25, p. 263.*

Rental payments for lights at crossings, *v. 25, p. 395.*

Service of subpoena duces tecum, *v. 25, p. 474.*

Sewer fee exemption for Chicago Housing Authority, *v. 25, p. 213.*

Sidewalks, canopy maintenance, *v. 27, p. 229.*

Single trip permits, *v. 27, p. 154.*

Use of Kinzie Street Ramp, *v. 27, p. 151.*

Wheel Tax License, exemption for federal employees, *v. 25, p. 202.*

FENCES

- Lake Shore Drive, maintenance, v. 26, p. 156.
- Railroads, right of way, proposal to require, v. 24, p. 525.
- Vacant Lots, proposed ordinance, v. 24, p. 277.

FINGERPRINTS

- See Police Department.

FIREARMS

- Ammunition, shortage of small arms, v. 26, p. 188.
- Gun registration, turn-in and impounding for violations of, v. 26, p. 185.
- Guns, Lincoln Park Gun Club, regulations, v. 26, p. 196.
- House of Correction personnel, carrying, v. 25, p. 78.
- House of Correction officers carrying, v. 26, p. 71.
- License Revocation for use of narcotics, v. 26, p. 200.
- Ordinances pertaining to non-citizens, v. 26, p. 197.
- Parades, authorized by governor, exemption from controls clarified, v. 26, p. 185.
- Pawnbrokers, responsibility to register, v. 26, p. 197.
- Registration form, necessary information, v. 26, p. 184.
- Registration,
 - In general, v. 26, p. 184.
 - Mail order sales, v. 26, p. 186.
- Registration of samples, v. 26, p. 194.
- Regulations of minors, v. 26, p. 197.
- Special Policemen, registration by, v. 26, p. 198.
- Transportation in vehicles, regulations, v. 26, p. 189.
- Watchmen and special guards, possession by, v. 26, p. 198.

FIRE DEPARTMENT

- Ambulances,
 - Charge for use of, v. 26, p. 79.
 - Mobile Coronary Care, v. 26, p. 80.
- Bond requirement, service outside city, v. 27, p. 52.
- Bureau of Fire Prevention, jurisdiction over hospitals, v. 26, p. 80.
- Closed service station, underground gas storage, v. 27, p. 113.
- Code amendment proposal, multi-unit dwellings, v. 27, p. 162.

FIRE DEPARTMENT—Continued

Damages caused by fire, liability of property owner for, v. 26, p. 82.

Death Benefit Fund, procedure for award, v. 27, p. 85.

Desk clerk ordinance, applicability of, v. 24, p. 274.

Disabled employee—alcoholic, maintenance on payroll, v. 26, p. 81.

Discrimination in employment practices, v. 26, p. 88.

Distilling and condensing plants, regulations applicable to, v. 25, p. 248.

Door attendant, when electric locks are used, v. 25, p. 241.

Educational Programs, liability, v. 27, p. 287.

Facility Construction, area for, v. 27, p. 376.

Fire alarm, location at school, v. 24, p. 107.

Fire alarm system in mixed occupancy building, v. 24, p. 79.

Fire apparatus, licenses for, v. 24, p. 365.

Fire extinguishers in multiple dwellings, v. 25, p. 347.

Fire extinguishers, signatures on, v. 25, p. 67.

Firemen's Arbitration Board, creation and legality of, v. 26, p. 91.

Fire Marshall's examination eligibility, v. 24, p. 115.

Firemen,

Change title to "Firefighter", v. 24, p. 128.

Killed on duty, salaries, v. 26, p. 119.

Moonlighting, prohibition of, v. 26, p. 32.

Rights before disciplinary board, v. 26, p. 89.

Fire Prevention Code, retroactivity of, v. 24, p. 454.

Fireworks display, permit fee for, v. 26, p. 285.

Flammable liquids, transportation of, v. 24, p. 267; v. 25, p. 233.

Indemnification by city when assisted by suburban department, v. 26, p. 89.

Inspector, refusal to admit, v. 24, p. 461.

Jurisdiction, buildings, v. 25, p. 84.

Minority hiring, v. 26, p. 87.

Motor vehicles, negligent operation by firemen, v. 26, p. 446.

Records, destruction of old, v. 25, p. 81.

Records storage, fire prevention bureau, v. 27, p. 48.

Safety clearance, gas cylinder storage, v. 27, p. 49.

Sprinkling system, at school, v. 25, p. 73.

State facilities, municipal fire regulations, v. 27, p. 52.

Tort immunity for fire fighting operations, v. 26, p. 86.

FIRE DEPARTMENT—Continued

Ventilating and exhaust systems, inspections of, v. 24, p. 435.

FIREMEN

Annuity and Benefit Fund, v. 27, p. 83.

Heirs-at-law, determination of, for refund, v. 27, p. 84.

Discrimination in hiring of, v. 26, p. 88.

Employment by city, effect of receiving state pensions on, v. 26, p. 120.

Killed on duty, salaries of, v. 26, p. 119.

Liability of property owner for injuries, v. 26, p. 82.

Moonlighting, prohibition of, v. 26, p. 32.

Rights before disciplinary board, v. 26, p. 89.

Child's annuity, v. 25, p. 152.

Credits, service after retirement age, v. 24, p. 165.

Credit, service that qualifies as, v. 25, p. 149.

Date of birth, v. 25, p. 149.

Deductions,

Payroll, v. 26, p. 142.

Pension checks, v. 24, p. 161.

Refund amount, excluded from annuity, v. 24, p. 170.

Widow's annuity, refund of, v. 24, p. 170.

Disability benefits based on last position held, v. 25, p. 150.

Fire Commissioner, membership status of, v. 24, p. 168, p. 172.

Future entrant status, v. 24, p. 162.

Health insurance for widows, payment of, v. 26, p. 142.

Military service, credit for, v. 24, p. 169; v. 25, p. 147.

Pensioner Service credits to, v. 25, p. 146.

Permanent position, defined, v. 25, p. 147.

Residence requirement, v. 27, p. 60.

Service credit, effect of term as President, Fireman's Association on, v. 26, p. 134.

Trustee, injured en route to board meeting, v. 25, p. 152.

Widow and Children, combined award, limitation on, v. 24, p. 166.

Widow's annuity,

Computation of, v. 24, p. 165.

Refund of, v. 24, p. 160.

FIREWORKS

- "Big-Bang", *v. 25, p. 239.*
- Blank cartridges, classified as, *v. 25, p. 251.*
- Bank pistols, *v. 25, p. 251.*
- "Escort" tear gas projectors, *v. 25, p. 224.*
- Permit fee for display, *v. 26, p. 285.*
- Plastic-type pellet guns, *v. 25, p. 230.*
- Sparklers, sale of, *v. 24, p. 262.*

FLAMMABLE LIQUIDS AND MATERIALS

- Cargo tanks, use of aluminum in, *v. 24, p. 275.*
- Distilling and condensing plants, safety provisions for, *v. 25, p. 248.*
- Explosive hazard gas,
 - storage of, *v. 25, p. 335.*
 - safety clearance, *v. 27, p. 49.*
- Fuel Tanks,
 - Hotel garage, *v. 24, p. 441.*
 - Installation on City Property, *v. 27, p. 303.*
 - Midway airport, *v. 24, p. 406.*
 - O'Hare Field, *v. 24, p. 725.*
 - Oil storage tanks, permits for, *v. 25, p. 329.*
 - Safety clearance for, *v. 24, p. 296.*
- Propane storage tank, permit for transportation of, *v. 24, p. 267.*

FLUORINE

- Purchase of, *v. 25, p. 451.*

FOODS, ESTABLISHMENTS AND SALES

- Adulteration, use of water to increase weight, *v. 24, p. 248.*
- Bakery vehicles, regulation of, *v. 24, p. 245.*
- Charitable institutions, food dispenser's license, *v. 26, p. 277.*
- Chelsea House, food dispenser's license required, *v. 26, p. 178.*
- Chicago Park District, food concessions within, legality of, *v. 26, p. 157.*
- Clear view required when liquor license held, *v. 25, p. 261.*
- Coffee shop, entertainment in, *v. 25, p. 303.*
- College cafeteria, dispenser's license for, *v. 24, p. 244.*

FOODS, ESTABLISHMENTS AND SALES—Continued

Cream toppings, regulation of, v. 26, p. 180.

Discotheque, cabaret, classified as, v. 25, p. 322.

Dispenser's licenses, exemptions for charitable organizations, v. 26, p. 280.

Entertainment, when amusement license is required, v. 25, p. 292.

Food purveyor—milk distributors, zoning for, v. 25, p. 356.

Frozen dessert products, regulation of, v. 24, p. 244; v. 25, p. 218.

International airport restaurants, maintenance expenses, v. 25, p. 611.

Licensing, see licenses, v. 25, p. 219; v. 26, p. 183.

Mobile Food Dispensers,

 In general, v. 26, p. 181.

 Frozen desserts, regulations, v. 26, p. 180.

 Regulation of, v. 26, p. 181.

 Restrictions near schools, v. 26, p. 179.

Private clubs, food dispenser license required, v. 26, p. 182.

Restaurant, zoning of, v. 25, p. 380.

Shoe-shine parlor, food dispenser's license in, v. 25, p. 220.

Sidewalk sales, v. 25, p. 221.

Slaughtering license, v. 25, p. 320.

University of Chicago Bookstore, v. 25, p. 219.

Use of hangar site for, v. 25, p. 603.

Vending machines at airport, v. 25, p. 600.

Zoning requirements when liquor is sold, v. 25, p. 258.

FRONTAGE CONSENTS

Boundary property, method of checking, v. 24, p. 511.

Constitutionality of, v. 25, p. 386.

Frontage, defined, v. 25, p. 354.

In General Manufacturing District, v. 26, p. 355.

Liquor establishment in residential district, v. 26, p. 356.

Nursing home, v. 24, p. 511, p. 513.

Nut packing house, frontage consents applicable to, v. 25, p. 385.

Pact to withhold consent, v. 24, p. 509.

Protest petition, sufficiency of, v. 24, p. 509.

Street reconstruction, petitions for, v. 27, p. 236.

Unconstitutional, deemed to be, v. 24, p. 515.

Withdrawal of, v. 24, p. 514.

FUNDS, CITY

Airport Bond Fund, *v. 25, p. 199.*

Aldermans' expense account, reporting, *v. 26, p. 3.*

Bonds, see that title.

Bonds, use of surplus, *v. 25, p. 495.*

City clerk, obligation to keep papers belonging to Pension funds, *v. 26, p. 5.*

City investments in out of state certificates of deposit, *v. 26, p. 427.*

City Judgment Fund, *v. 25, p. 483.*

City Property, from sale of, *v. 25, p. 503.*

City Transit Fund, *v. 25, p. 397, p. 405.*

Community Improvement Bond Fund, use of, *v. 26, p. 428.*

Contingent Accounts, transfer involving, *v. 24, p. 628.*

Contract compliance, monies reserved to ensure, *v. 26, p. 482.*

Demolition liens, appropriation of funds to protect, *v. 26, p. 429.*

Distribution of, *v. 25, p. 474.*

Dues for National Airport Noise Abatement Council, *v. 25, p. 470.*

Exemptions from water charges, *v. 25, p. 468.*

Financial statement to a private source, providing of a, *v. 26, p. 430.*

Grants, accepting, *v. 25, p. 449.*

Grants, power to receive, expend, *v. 26, p. 155.*

I.R.S. demand for certain money held by the Police Department, *v. 26, p. 17.*

Impounded Vehicle Revolving Fund, legality of, *v. 24, p. 626.*

Interest on tax refund reserve, disposition of, *v. 24, p. 623.*

Judgments, interest rate paid on, *v. 26, p. 445.*

Leases, Navy Pier, approval of, *v. 26, p. 431.*

Lien on Public fund, not land, *v. 25, p. 464.*

McCormick Place, financing of reconstruction of, *v. 26, p. 515.*

Memorial, appropriation for, *v. 24, p. 621.*

Motor Fuel Tax, *v. 25, p. 475.*

Municipal Building Bond,

Use of construction at Midway, legality of, *v. 26, p. 451.*

Use of to acquire buildings, *v. 26, p. 453.*

Municipal Building for police, *v. 25, p. 481.*

FUNDS, CITY—Continued

Municipal Tuberculosis Sanitarium, "Entertainment trust fund", v. 26, p. 68.

Parking facility funds,

Surplus, use of after bond retirement, v. 26, p. 458.

Use of, v. 25, p. 473.

Use of for purchase of outstanding bonds, v. 26, p. 456.

Parking facility revenue,

Distribution of, v. 25, p. 444.

Parking meter maintenance fund, v. 24, p. 633.

Transfer, v. 24, p. 631.

Transfer from surplus revenue account, v. 26, p. 431.

Use of, v. 25, p. 465.

Utilization of Surplus, v. 24, p. 630, p. 632.

Payouts with liens pending, v. 25, p. 471.

Protest, paid under, use of, v. 25, p. 463.

Railroads, payments to city—use of, v. 26, p. 438.

Relocation of Urban Renewal funds, v. 25, p. 217.

Reserve maintenance account, v. 25, p. 466, p. 475.

Rewards for civilian heroism, v. 24, p. 627.

Sale of abandoned vehicles, v. 25, p. 464.

Security agreements, obtaining for depository of city funds,
v. 26, p. 436.

Sinking funds, flight fees in, v. 25, p. 497.

Sinking funds, use of to purchase parking facility bonds in
open market, v. 26, p. 455.

Special funds, v. 25, p. 470.

Special assessment funds, v. 25, p. 409.

Separation of, v. 24, p. 629.

Subway Revenue Bonds, v. 26, p. 457.

Subway, superhighway and public transportation bond
funds for rapid transit cars, use of, v. 26, p. 437.

Suspense accounts, v. 25, pp. 469, 526.

Taxes by municipal department, payment of, v. 26, p. 416.

Transfer by Comptroller, v. 25, p. 472.

Urban Mass Transportation, matching funds, v. 27, p. 5.

Use tax, not returnable to Water Fund, v. 25, p. 451.

Variance in use of Chicago Housing Authority funds, v. 25,
p. 216.

Vehicle Tax, v. 25, p. 475.

Water charges,

Collected funding of, v. 25, p. 527.

Collection of, v. 25, p. 527.

FUNDS, CITY—Continued**Water Fund,**

Not reimbursed for use of tax paid, *v. 25, p. 451.*

Property use to erect a taxicab testing facility, legality of, *v. 26, p. 425.*

Use of, *v. 25, p. 472.*

Water suspense accounts, *v. 26, p. 441.*

Wheel Tax Fund for street improvement, *v. 24, p. 610.*

G**GAMBLING AND LOTTERIES**

Bingo, *v. 25, p. 232.*

"Bond Night Drawings", *v. 24, p. 256.*

"Darto" Game, *v. 25, p. 231.*

Exhibition of gaming equipment, sanctions, *v. 27, p. 111.*

Federal Gambling Stamp, effect of, *v. 24, p. 46.*

"Free Play" Juke Box, *v. 24, p. 260.*

Gambling device defined, *v. 27, p. 112.*

Lottery, *v. 25, p. 323, p. 427.*

Motor vehicle, federal confiscation of, *v. 24, p. 258.*

Prohibition by statute, *v. 25, p. 231.*

Seizure and disposition of money, *v. 26, p. 203.*

Theatre promotional scheme, *v. 24, p. 358.*

Trade stimulator, status of, *v. 24, p. 254.*

Vending machine, one item, legality, *v. 24, p. 368.*

GARAGES

See also Parking.

Condominium, applicable of parking tax, *v. 26, p. 407.*

Hotel, permit for gasoline tank in, *v. 24, p. 441.*

Open area used for parking, *v. 25, p. 337.*

Public,

Defined, *v. 25, p. 347.*

Planned development, regulations concerning, *v. 26, p. 286.*

Rates, posting of, *v. 26, p. 404.*

Set back requirement—Traffic congestion on abutting streets, *v. 26, p. 405.*

GARBAGE

Collection, in multiple dwellings, *v. 25, p. 84.*

GARBAGE—Continued

Containers,

Location of, *v. 25, p. 246.*

Concrete, *v. 24, p. 411.*

Disposal, operation limitations exemption, *v. 27, p. 116.*

Enforcement of Garbage Ordinances, *v. 27, p. 118.*

Foreign refuse disposal, O'Hare, *v. 27, p. 363.*

Illinois Disposal Law, city's exemption from, *v. 26, p. 467.*

Location of landfill sites, *v. 27, p. 203.*

Standard refuse container, ordinances governing, *v. 25, p. 250.*

Ticket, for accumulation, of, *v. 25, p. 246.*

GASOLINE TANKS

See Fuel Tanks under Flammable Liquids and Material.

H

HANDICAPPED

Chauffeur's Licenses, *v. 27, p. 143.*

Chicago Transit Authority, accessibility, *v. 27, p. 225.*

Facilities for the handicapped, *v. 26, p. 304.*

Qualifications for public chauffeurs' license, *v. 27, p. 132.*

Transportation service, license required, *v. 27, p. 141.*

HARBORS

See Waterways.

HEALTH, BOARD OF

Air Pollution, control of, *v. 25, p. 37.*

Ambulance service, license requirement, *v. 27, p. 141.*

Automated blood pressure devices, regulation of, *v. 27, p. 41.*

Burial certificates, out-of-state, *v. 24, p. 62.*

Certified raw milk, sale of, *v. 24, p. 243.*

Chicago Park District, jurisdiction over institutions within, *v. 24, p. 67.*

Communicable diseases, isolation, penalty for refusal, *v. 26, p. 62.*

Compensation for period of inactive status, *v. 27, p. 38.*

Consent of minors for treatment, *v. 27, p. 36.*

HEALTH, BOARD OF—Continued

- Contagious diseases, charges at hospitals, *v. 25, p. 50.*
- Contraceptive devices, sale of, *v. 25, p. 249.*
- Day Care Centers, requirements for licensing, **v. 26, p. 49.**
- Day Nurseries, see that title.
- Dead Animals, disposal of, *v. 25, p. 310.*
- Deceased, claiming bodies of, *v. 25, p. 59.*
- Dispensary license,
 - Exclusion of hospitals, **v. 26, p. 281.**
 - Who must obtain, **v. 26, p. 279.**
- Dogs, impounding of, *v. 25, p. 46.*
- Emergency Medical care, community plan, **v. 26, p. 56.**
- Examination,
 - Authority to compel, **v. 26, p. 61.**
 - For fitness of food products, *v. 25, p. 218.*
 - Of school children, **v. 26, p. 58.**
- Food, cream toppings, regulation of, **v. 26, p. 180.**
- Food, frozen desserts, mobile food dispensers, regulations, **v. 26, p. 180.**
- Frozen dessert products, regulation of, *v. 24, p. 244.*
- Frozen sandwiches, inspection of, *v. 24, p. 251.*
- Fumigating devices, regulations of, *v. 24, p. 59.*
- Handicapped, facilities for the, **v. 26, p. 304.**
- Homes, closing of, *v. 24, p. 69.*
- Hospitals, authorization forms, discussed generally, **v. 26, p. 50.**
- Ice cream, alcoholic ingredients, *v. 24, p. 247.*
- Individual injured outside its premises, **v. 26, p. 52.**
- Infant Welfare Station, use of by private health committee, **v. 26, p. 56.**
- Janitorial Services for health center, **v. 26, p. 59.**
- La Rabida Sanitarium, jurisdiction over, *v. 24, p. 67.*
- Liability for health screening programs, **v. 27, p. 42.**
- Machine Shop, regulation of working hours, *v. 25, p. 239.*
- Malpractice insurance, city health facilities, **v. 27, p. 43.**
- Mental Hygiene Program, employees of, *v. 25, p. 114.*
- Milk,
 - See also Milk Products.
 - Advertising on cartons of, *v. 25, p. 46.*
 - Inspection of, *v. 25, p. 51.*
 - Processing, charges for milk and milk products, *v. 25, p. 454.*
- Mobile Coronary Care, **v. 26, p. 80.**

HEALTH, BOARD OF—Continued

- Mobile Coronary Care Unit, licensing, v. 26, p. 287.
- Municipal Tuberculosis Sanitarium, see that title.
- Non-Governmental activities, hold harmless agreement, v. 27, p. 35.
- Nursing home, requirements for, v. 25, p. 47.
- Outpatient treatment, charging prohibited, v. 25, p. 53.
- Personal service contracts, see contracts.
- Photographs of individuals receiving services, use of, v. 26, p. 58.
- Poultry, see meats and poultry.
- Pregnant minors, prenatal examinations, regulations concerning, v. 26, p. 219.
- Private patients, treatment of, v. 27, p. 35.
- Raising of bees prohibited, v. 27, p. 43.
- Records,
 - Examination of, v. 26, p. 53.
 - Patient records to independent researchers, v. 27, p. 42.
 - Release of, v. 26, p. 59.
 - Sanitation inspection reports, v. 27, p. 36.
- Residential care home, defined, v. 27, p. 39.
- Rest rooms in places of business, v. 26, p. 220.
- Rodent Control Service, v. 26, p. 315.
- Slaughtering, license, v. 25, p. 320.
- Soap manufacturing, jurisdiction over, v. 25, p. 319.
- Surgery, consent for, v. 25, p. 58.
- Syphilis, mandatory serologic test for, v. 24, p. 68.
- Transportation of sick or injured persons, v. 26, p. 54.
- Treatment, eligibility for, v. 23, p. 45.
- Vacation and sick leave, accrued, v. 26, p. 121.
- Vaporizers, regulation of sale, v. 24, p. 59.
- Venereal disease, distribution of pamphlets concerning, v. 26, p. 224.
- Veterinarian, requirement for, v. 24, p. 67.
- Veterinary service for police department, responsibility for, v. 26, p. 59.
- X-Ray laboratory, inspection of, v. 24, p. 65.

HELICOPTER

- Heliport Ordinance, v. 26, p. 499.
- Proposed Amendment, v. 26, p. 502.
- Regulation of, v. 25, p. 604.

HIGHWAYS

See also Expressways.

Air rights, obligation of highway agencies to pay for use of,
v. 26, p. 375.

HOME

Closing of, Board of Health procedure in, v. 24, p. 69.

Frontage consent requirements, v. 24, p. 511, p. 513.

License for, revocation hearings on, v. 24, p. 71.

Nursing,

Liquor License within one hundred feet, v. 24, p. 302.

Standards, minimum bathroom fixtures, v. 24, p. 70.

Transferability of license, v. 24, p. 421.

Special uses, proposed zoning classification, v. 24, p. 507.

HOME-RULE

Authority to consolidate park district with city, v. 27, p.
103.

Authority to contract with Federal government, v. 27, pp.
100, 102.

Cigarette Tax, v. 26, p. 414.

City Council, control over the nature of the, v. 26, p. 5.

Confession of Judgment Clauses, proposal to restrict, v. 27,
p. 1.

Loading zone fee, authority to assess, v. 26, p. 385.

Ordinance, effect on previously void, v. 26, p. 163.

Power to incur debt, v. 27, p. 3.

Power to regulate building requirements, state agency, v.
27, p. 166.

Regulation of public gatherings, v. 27, p. 116.

Sales—regulation, v. 26, p. 6.

HOSPITAL

Authorization forms, concerning Board of Health generally,
v. 26, p. 50.

Cook County, Parking Citations, v. 27, p. 247.

Desegregation ordinance, enforcement of, v. 24, p. 281.

Dispensary license, v. 26, p. 281.

Emergency medical care, community plan, v. 26, p. 56.

Fire prevention bureau, jurisdiction over, v. 26, p. 80.

Handicapped persons, transportation of, v. 27, p. 144.

Individual injured outside its premises, duty to, v. 26, p. 52.

HOSPITAL—Continued

- Laundry, exempt from license regulation, v. 26, p. 286.
- Lying-in Hospital, license for, v. 25, p. 324.
- Mobile Coronary Care Unit—licensing requirements, v. 26, p. 287.
- Municipal Tuberculosis Sanitarium—see that title.
- Patient Admission in general, when required, v. 26, p. 51.
- Private transportation service, physically handicapped, v. 27, p. 141.
- Psychiatric clinic considered as hospital, v. 25, p. 322.
- Records, examination of, v. 26, p. 53.
- Salvation Army facility, defined, v. 26, p. 51.
- Serologic test, not required for admission to, v. 24, p. 68.
- Transportation of sick or injured to hospital, v. 26, p. 54.

HOTELS

- Hotel occupancy tax, v. 26, p. 415.
- Motion pictures showed, license required, v. 26, p. 268.
- Statutory regulations, purpose of, v. 25, p. 331.

HOUSE OF CORRECTION

See Corrections, Department of.

HOUSE OF CORRECTION EMPLOYEES' FUND

- Board of Trustees, filling vacancy, v. 24, p. 205.
- Consolidation with Municipal Employees Fund, v. 26, p. 124.
- Death benefits, assignability of, v. 25, p. 187.
- Suspended employees' rights, v. 24, p. 206.
- Widow's annuity, v. 24, p. 205.

HOUSING

See Buildings, Department of.

HUMAN RELATIONS, COMMISSION ON

- Fair Housing Ordinance,
 - Application, v. 26, p. 163.
 - Conciliation agreements, procedure, v. 26, p. 161.
- Panic peddling, v. 26, p. 218.
- Senior citizens groups as not-for-profit corporations, v. 26, p. 95.

I

ICE CREAM

Alcoholic ingredients, *v.* 24, *p.* 247.

ILLINOIS COMMERCE COMMISSION

Authority over construction of railroad crossing, *v.* 25, *p.* 388.

Authority to grant request for barricades, *v.* 25, *p.* 391.

Bridges, authority over, *v.* 25, *p.* 417.

Height clearance signs, authority of, *v.* 27, *p.* 210.

C.T.A. elevated structures, *v.* 27, *p.* 226.

Jurisdiction over railroad safety matters, *v.* 26, *p.* 362.

Limousine service, power to regulate, *v.* 27, *p.* 130.

Maintenance agreement, enforcing, *v.* 25, *p.* 394.

Motion for field hearings—fair increase, *v.* 27, *p.* 207.

Pedestrian gates at railroad grade crossings, *v.* 26, *p.* 359.

Public Utilities Act, subpoena of witnesses, *v.* 27, *p.* 46.

Railroad Crossing, jurisdiction over, *v.* 25, *p.* 395; *v.* 26, *p.* 363, *p.* 364, *p.* 358.

Railroad right-of-way, fencing of, *v.* 26, *p.* 363.

Tariff rates, daily truck hire, *v.* 26, *p.* 411.

Viaduct clearance signs, authority over, *v.* 25, *p.* 419.

INSPECTIONS

Air Pollution, *v.* 25, *p.* 75.

Building, *see* Buildings, Department of.

City, Right to inspect materials contracted for, *v.* 25, *p.* 594.

Contractors liability for, *v.* 25, *p.* 559.

Electrical equipment, inspections by City, statutory justification for, *v.* 25, *p.* 344.

Elevators,

Fee exemption, *v.* 24, *p.* 397, *p.* 405.

Hospitals, *v.* 24, *p.* 293.

Fees,

Canopies, on end over private property, *v.* 24, *p.* 456.

Coin operated laundries, *v.* 26, *p.* 423.

Gasoline pump lights, *v.* 24, *p.* 571.

Hospitals, *v.* 24, *p.* 293, *p.* 405.

Joinder of parties for collection of past due warrants, *v.* 26, *p.* 442.

Responsibility for, *v.* 25, *p.* 329.

INSPECTIONS—Continued

- License, application, *v. 25, p. 307.*
- Refusal to admit inspector, *v. 24, p. 461.*
- X-Ray laboratory, *v. 24, p. 65.*

INSURANCE

- Auxiliary police officers, coverage of, *v. 26, p. 41.*
- Contractors liability, protection for city, *v. 25, p. 546.*
- City employee's—auto liability insurance requirement, *v. 26, p. 446.*
- Hospitalization insurance as taxable income, city payment of employees, *v. 26, p. 119.*
- Indemnification of city, example of agreement for, *v. 26, p. 487.*
- Liability for erecting signs within city, *v. 25, p. 492.*
- Liability of City, Protection against, *v. 25, p. 481.*
- Performance bond request, Pollution Control Board, *v. 27, p. 374.*
- Police Dogs—retired, procurement of insurance by donee of, *v. 26, p. 28.*
- Public Vehicle insurance requirements, *v. 26, p. 260.*
- Taxicab as self-insurer, *v. 25, p. 280.*
- Taxicab insurance, sample contracts, *v. 25, p. 274.*
- Voting machines,
 - Coverage for, *v. 25, p. 628.*
 - Fire insurance, *v. 27, p. 328.*

J**JUDGMENTS**

- Failure to satisfy, effect on license, *v. 26, p. 297.*
- Fair market value, eminent domain, *v. 27, p. 290.*
- Interest on, *v. 25, p. 478.*
- Interest rate, change of, *v. 26, p. 445.*
- Payment of, *v. 25, p. 478.*
- Payment on contract after judgment, *v. 25, p. 552.*
- Policeman promotion order, *v. 27, p. 295.*
- Purchase of boats, consent decree, *v. 27, p. 294.*
- Segregation of funds order, removal of, *v. 27, p. 264.*

JUNK YARDS

- Storage of steel ingredient, *v. 24, p. 496.*

L

LABOR

Picketing at airports, during strike, v. 26, p. 507.

LABORERS AND RETIREMENT BOARD EMPLOYEES' ANNUITY AND BENEFIT FUND

Alias,

Effect of use of, v. 25, p. 102.

Working and contracting under, v. 25, p. 182.

Working and contributing under, v. 24, p. 194.

Assignability of Benefits, v. 24, p. 195; v. 25, p. 181.

Benefit hearing decisions, administrative review, v. 27, p. 93.

Board of Education lunchroom attendants, effect of civil service classification on contributions, v. 26, p. 148.

Bonds, defaulting, v. 24, p. 197.

Child's annuity,

Effect of adoption on, v. 24, p. 202.

Payment to guardian, v. 25, p. 183.

Conflicting claims to benefits, procedure, v. 26, p. 150.

Contribution for past service, v. 24, p. 199; v. 25, p. 176.

Duty disability,

Eligibility for, v. 24, p. 202; v. 25, p. 175, p. 178, p. 183.

Reinstatement, v. 25, p. 179.

Funeral expenses, use of fund for, v. 24, p. 196, p. 198.

Job application, misstatement on, v. 24, p. 198.

Misdemeanor, effect of conviction of, v. 25, p. 177.

Overtime, deductions from, v. 24, p. 204.

Payment, only after final judgment, v. 25, p. 174.

Right to benefits—employee without Civil Service status, v. 26, p. 149.

Salaries,

Computation of overtime, v. 25, p. 185.

What constitutes, v. 24, p. 200.

Widow's annuity,

Death "in service" requirement, v. 27, p. 91.

Evidence of dissolution of prior marriage, v. 27, p. 92.

LANDMARKS, CHICAGO COMMISSION ON

"Landmark" designation—procedure, v. 26, p. 308.

LANDMARKS, CHICAGO COMMISSION ON—Continued

Landmark, designation contested, v. 26, p. 309, p. 312.

Owner's consent to landmark designation, v. 27, p. 54.

Public hearing for structure to receive "landmark" status, v. 26, p. 309.

LEASES—CITY**Airport,**

Control Tower, Midway, indemnity provision, v. 27, p. 300.

"From leases" at, v. 25, p. 462.

Financing of leasehold at ORD, v. 26, p. 503.

Hangar site leases, tenant obligation, v. 27, p. 360.

Landing fees, v. 26, p. 502.

Method of computing, v. 25, p. 517.

Procedure upon default, v. 24, p. 667.

Maintenance obligations, leased terminal areas, v. 27, p. 366.

Meigs Field, air traffic control tower, agreement with F.A.A., v. 27, p. 860.

Minimum rent, abatement, grounds for, v. 27, p. 301.

Objections to lease provisions, v. 27, p. 366.

O'Hare Fuel System, v. 27, p. 357.

Right of airline to sublease space at O'Hare, v. 26, p. 509.

Sublease for other than airport purposes, v. 25, p. 602.

Sublease, legality of charging an override on, v. 26, p. 510.

Chicago Public Library, Mandel Building, v. 27, p. 55.

Concessions, Purchasing Act inapplicable, v. 24, p. 23.

Default, effect of, v. 27, p. 308.

Docking facilities, v. 25, p. 67.

Electrical Services, billings, v. 27, p. 350.

Hangar site, use of, v. 25, p. 603.

Holdover tenant, rights of city, v. 27, p. 54.

International airport restaurants, v. 25, p. 611.

International airport terminal, joint use of space, v. 27, p. 365.

Interpretation, contradiction of terms of lease, v. 25, p. 519.

Land interests, lease alteration, v. 27, p. 303.

Leasehold improvements, compensation for, v. 27, p. 299.

Machinery, taxes applicable, v. 25, p. 453.

Meigs Field, v. 25, p. 609.

Office space in terminal building, v. 25, p. 608.

LEASES—Continued

Municipal Property, lease without reasonable compensation, legality of, v. 26, p. 462.

Navy Pier

Approval of, v. 26, p. 43m; v. 27, p. 304.

Auditorium, v. 27, p. 316.

Parking, procedure for application, v. 27, p. 307.

Parking facility,

For non-parking purposes, v. 24, p. 665.

Operations, assignment of, v. 27, p. 299.

Parkways for parking, v. 24, p. 593.

Public property, power of City Council, v. 24, p. 23.

Public Street, leasing of, v. 25, p. 414.

Renewal of, v. 26, p. 464.

Rent, mistake, v. 26, p. 464.

Rent abatement, untenable premises, v. 27, p. 309.

Rental increases, O'Hare parking lot, v. 27, p. 320.

Skyway,

Parking on, prohibited, v. 26, p. 387.

Restaurant and Service station on, v. 25, p. 14.

Sublease, restricted to basic use, v. 25, p. 607.

Untenantability, effect on, v. 25, p. 519.

Water services, obligation for, v. 27, p. 301.

LENDING INSTITUTIONS

Small loans, Legal interest rate on, v. 26, p. 215.

LIABILITY OF CITY

Accident after arrest, v. 24, p. 637; v. 25, p. 482.

Air conditioning unit, projecting, v. 24, p. 642.

Automobiles, fair market value, v. 27, p. 279.

Bureau of parking, employee engaged in repair of parking meter, v. 25, p. 489.

Chicago Freight Tunnel, Collapse of, v. 26, p. 467.

Chicago Public Library, v. 24, p. 103; v. 27, p. 278.

Clean air regulations, violations of, v. 27, p. 118.

CTA/Public utilities, damages caused by installation of water main, v. 26, p. 367.

Chicago Tunnel Company claim, settlement of, v. 24, p. 651.

City Hall fire, damage caused, v. 25, p. 480.

City Parking Facility, v. 24, p. 587.

Contractors action, v. 27, p. 277.

LIABILITY OF CITY—Continued

- Court costs, erroneous named defendant, v. 27, p. 281.
Demolition of Property not a nuisance, v. 25, p. 341.
Dock facilities, repair of, v. 27, p. 311.
Educational programs, v. 27, p. 287.
Employees, insurance for, v. 27, p. 283.
Employees negligence, v. 24, p. 653; v. 27, p. 285.
Garnishment, creditor's suit, v. 26, p. 442.
Government immunity for tort, v. 25, p. 483, v. 26, p. 86.
Health records, release to private researchers, v. 27, p. 42.
Health screening programs, v. 27, p. 42.
Hold harmless agreements, minors, v. 27, p. 275.
House of Correction, employees', v. 25, p. 62.
Illegal entry, settlement, v. 27, p. 274.
Indemnification of City, example of agreement for, v. 26, p. 487.
Invasion of privacy, photographs, v. 27, p. 280.
Immunity in performing governmental functions, v. 25, p. 477.
Independent contractors, civil liability, v. 27, p. 282.
Injured person, liability to hospital for, v. 25, p. 42.
Invasion of privacy, v. 27, p. 286; v. 27, p. 293.
I.R.S. demand for certain moneys held by the Police Department, v. 26, p. 17.
Janitorial Services for health center, payment of, v. 26, p. 59.
Judgments, interest rate on, v. 26, p. 445.
Lead poisoning victim, liability of city to, v. 26, p. 313.
Library Employee's negligence, v. 24, p. 649.
Lien against public funds—procedure, v. 26, p. 488.
Malpractice, v. 26, p. 63.
 Insurance, city health facilities, v. 27, p. 43.
Mental treatment, handling of persons in apparent need of, v. 26, p. 21.
Minor's medical exam, court ordered, expenses of, v. 27, p. 24.
Mistake of fact, release authorization, v. 27, p. 274.
Municipal Tuberculosis Sanitarium, liability insurance for, v. 25, p. 54.
Newsfilm donations, v. 27, p. 285.
Notice, sufficiency of service, v. 24, p. 647.
"Open-house Fly in", v. 25, p. 481.
Party Wall, demolition of, v. 24, p. 648; v. 26, p. 379.
Paychecks cashed on forged endorsements, v. 26, p. 118.

LIABILITY OF CITY—Continued

Paychecks, stolen, employees', v. 26, p. 119.
Photographs of individuals receiving medical services, use of, v. 26, p. 58.

Police,

Service outside of City limits, v. 24, p. 55.
Special police for Humane Societies, v. 24, p. 643.
Tortious acts of, v. 25, p. 315.
Vehicles without sirens, v. 24, p. 640.

Police dogs, disposal of, v. 26, p. 29.

Policemen Auxiliary, indemnification of, v. 26, p. 42.

Public Utilities, personal injury, v. 27, p. 213.

Radiant heating systems, installed under city sidewalks, damages caused to, v. 26, p. 389.

Railroad grade crossing approaches, responsibility for maintenance, v. 26, p. 359.

Relocation of utility facilities, liability for expense of, v. 26, p. 373.

Riverbanks dock wall, maintenance of, v. 26, p. 97.

School children, city facility visitation, v. 27, p. 275.

Sculpture, artists, v. 27, p. 292.

Sidewalks,

Owner of abutting premises, v. 25, p. 413.

Personal injury—maintenance, v. 26, p. 466.

Private basin located in, v. 24, p. 556.

Repair of, v. 24, p. 562.

Snow removal, v. 24, p. 562, p. 563.

Sludge disposal, riparian owners, v. 27, p. 288.

Stolen evidence from storage, v. 27, p. 282.

Storage charges, city property, v. 27, p. 279.

Suburban Fire Departments assisting City, indemnification of, v. 26, p. 89.

Subway construction, damages resulting from, v. 26, p. 514.

Taxes,

Leasing Occupation tax, v. 26, p. 416.

Municipal Department, v. 26, p. 416.

Tax, retailers occupational, sales of salvage, v. 26, p. 418, p. 419.

Tort liability, defense, v. 27, p. 276.

Traffic, damages caused by, v. 25, p. 489.

Transportation of sick or injured persons, v. 26, p. 54.

Tree trimmer, injured in test for, v. 24, p. 645.

LIABILITY OF CITY—Continued

Unauthorized use of private vehicles, *v. 25, p. 509.*

Volunteers, injury to, *v. 27, p. 278.*

Volunteer workers, M.T.S., *v. 24, p. 78.*

Water main, damages caused by, *v. 26, p. 470; v. 27, p. 288.*

Workmen's compensation claim, subrogation for, paid to employee, *v. 27, p. 71.*

LICENSES

Accommodation bus transportation, necessity of license for, *v. 25, p. 272.*

Ambulance driver, felony conviction, *v. 26, p. 247.*

Ambulance, provisions for revocation of, *v. 26, p. 246.*

Ambulance service, similar names, *v. 27, p. 136.*

Amusement devices, transfer of, *v. 24, p. 374.*

Amusement license,

 When required, *v. 25, p. 292.*

 Exemption from, *v. 26, p. 267.*

 Public place of amusement, *v. 27, p. 148.*

 Revocation of, *v. 26, p. 271.*

 See also Amusement and Amusement Places.

Animals, Sale of, *v. 24, p. 428.*

Arcade, kiddie rides, *v. 27, p. 149.*

Armored car check cashing, licensing of, *v. 27, p. 150.*

Auctioneers, residency requirements, *v. 27, p. 152.*

Auctioneers, license exemption, *v. 27, p. 154.*

Automatic amusement license, *v. 25, p. 298.*

Automatic amusement machine, *v. 25, p. 286.*

Auction license, *v. 26, p. 226.*

Automobile repossession business, *v. 24, p. 7.*

Bakery truck, itinerant vendors, *v. 24, p. 404; v. 26, p. 273.*

Banks, *v. 24, p. 410.*

Barber Shops, *v. 24, p. 424; v. 25, p. 308; v. 26, p. 274.*

Billiard parlor, public place of amusement, license required, *v. 25, p. 300.*

Billiards room, full view required, *v. 25, p. 197.*

Boat Tours, *v. 26, p. 274.*

Book stores charging admission, obscenity, *v. 26, p. 266.*

 Display in Chicago—sale outside, *v. 26, p. 275.*

Brokers license fee, application of, *v. 26, p. 275.*

LICENSES—Continued**Chauffeur's,**

Arrests, effect on license, *v. 27, p. 131.*

Character as consideration, *v. 25, p. 271.*

Effect of Felony conviction, *v. 27, p. 140.*

Handicapped applicants, qualification, *v. 27, p. 132; v. 27, p. 143*

Issuance to convicted felons, *v. 26, p. 249.*

Marijuana conviction, effect on application for, *v. 26, p. 249.*

Non-discriminatory testing procedures, *v. 27, p. 144.*

Psychiatric commitment—effect on application, *v. 26, p. 251.*

Revocation hearing, mayor's license commission, *v. 27, p. 145.*

Revocation of, *v. 25, p. 273; v. 26, p. 254.*

Revocation for soliciting for prostitute, *v. 26, p. 252.*

Revocation for taximeter violation, *v. 26, p. 254.*

Temporary, issuance of, *v. 27, p. 143.*

When required, *v. 24, p. 363.*

Chauffeur's license, issuance to alien resident, *v. 26, p. 248.*

Chicago Film Festival, required, *v. 26, p. 291.*

Cigarette dealers, see that title.

City Retailer's Liquor License, expansion of use, *v. 27, p. 192.*

Closing out sale, *v. 24, p. 268, p. 270.*

Coin operated laundry, *v. 25, p. 309.*

Certificate of fitness for attendants required, *v. 26, p. 287.*

Collection and employment agencies, *v. 26, p. 276.*

Committee on, duties of, *v. 24, p. 10.*

Concrete contractors, *v. 24, p. 422.*

Construction equipment, *v. 24, p. 362.*

Currency exchange, proposal to, *v. 24, p. 429.*

Day Care Centers, required of, *v. 26, p. 49.*

Day care center—day camps, grounds for denial or revocation, *v. 26, p. 276.*

Dead animals, disposal of, *v. 25, p. 310.*

Dental laboratories, *v. 24, p. 414.*

Detective, *v. 25, p. 318; v. 26, p. 281.*

Dining room, exception for Chicago Bar Association, *v. 26, p. 278.*

Dispensary, on site of Lying-In Hospital, *v. 25, p. 254.*

LICENSES—Continued

Dispensary license,

Exclusion of hospitals, v. 26, p. 281.

Who must obtain, v. 26, p. 279.

Dogs, licensing of, v. 26, p. 282.

Dogs, raising and breeding, v. 24, p. 400.

Drainlayers, bond posting, v. 25, p. 318.

Drivers, see motor vehicles.

Dry cleaner and coin operated laundry, v. 25, p. 309.

Duplicate vehicle tax emblem, v. 27, p. 145.

Electrical contractors, v. 27, p. 159.

Engineers, out of state, v. 26, p. 285.

Excavating, incidental—license not required, v. 26, p. 285.

Fees,

Exemption, hospitals, v. 24, p. 293.

Fish and game, income tax on, v. 24, p. 87.

Flammable liquids, storage of, v. 25, p. 215.

Florist, v. 25, p. 312.

Food dispenser,

Charitable institution, v. 26, p. 277, p. 280.

Mobile, regulation of, v. 26, p. 181.

Private clubs, v. 26, p. 182.

Required at Chelsea House, v. 26, p. 178.

Revocation of, v. 26, p. 183.

Food dispenser's license and liquor license, clear view required, v. 25, p. 261.

Food Dispenser's License,

Fee exemption, v. 27, p. 108.

Illinois Institute of Technology, v. 24, p. 244.

Shoe-Shine parlor, v. 25, p. 220.

University of Chicago Bookstore, v. 25, p. 219.

Fuel oil dealer, v. 25, p. 233.

Fuel tanks at airports, v. 24, p. 406, p. 725.

Funeral director, v. 24, p. 384.

Garbage box manufacturer, concrete, v. 24, p. 411.

General Scope, v. 26, p. 288.

Going out of business sale, revocation of, v. 24, p. 289.

Gun clubs, v. 25, p. 227.

Hardware,

Selling of in drug stores, v. 24, p. 414.

Selling of in lumber yard, v. 25, p. 311.

Hauling of debris from building site, v. 26, p. 277.

LICENSES—Continued

Hobby shop, miniature auto races in, amusement license required, *v. 25, p. 296.*

Illinois Hospital Licensing Act, Salvation Army, applicability to, *v. 26, p. 51.*

Inspections, *v. 25, p. 307.*

Junk dealers, wholesale, *v. 24, p. 420.*

Laundry,

When separate licenses are required, *v. 25, p. 309.*

Hospital exception, *v. 26, p. 286.*

Liquidation sales, *v. 24, p. 264.*

Liquor, see that title.

Livery, assignment of, *v. 27, p. 141.*

Livery, simultaneous taxicab license, *v. 27, p. 143.*

Lying-In Hospital, *v. 25, p. 324.*

Medicars, *v. 27, p. 146.*

Microwave transmitter, FCC License, *v. 27, p. 158.*

Mobile crane, *v. 24, p. 353.*

Motion pictures,

In general, *v. 26, p. 290.*

Shown via closed circuit in hotel, *v. 26, p. 269.*

Motor vehicle fees, refund of, *v. 26, p. 259.*

Motor Vehicles,

In storage, *v. 27, p. 137.*

Mobile crane, *v. 24, p. 353.*

Repair shops, status of, *v. 24, p. 418.*

Sale by private organizations, *v. 26, p. 263.*

Motor vehicle license, see motor vehicles.

Motor Vehicle Sticker,

Municipally owned vehicles, *v. 26, p. 471.*

Resident status determinative, *v. 26, p. 291.*

Music and dancing, when required of liquor dealer, *v. 26, p. 228.*

Not-for-Hire vehicle, license fee exemption, *v. 27, p. 135.*

Numerical limits on liquor licenses, *v. 27, p. 140.*

Nursing home,

Generally, *v. 25, p. 47.*

Revocation hearings, *v. 24, p. 71.*

Transferability of, *v. 24, p. 421.*

Parking facility (City owned), *v. 24, p. 403.*

Parking lots,

Coin operated, *v. 24, p. 427; v. 26, p. 404.*

LICENSES—Continued

- Private, v. 24, p. 430.
- Roof area, v. 24, p. 399.
- Passenger vehicles, public, regulation of, v. 27, p. 138.
- Poultry Slaughtering establishment, v. 24, p. 60.
- Photographer's license, requirements, v. 26, p. 292.
- Plumbers,
 - Examination for, v. 26, p. 294.
 - Reissuance of, v. 26, p. 295.
- Psychiatric clinic, considered hospital, v. 25, p. 322.
- Public dance halls, employees, no identification requirements, v. 26, p. 266.
- Public Garage, planned development, regulations concerning, v. 26, p. 286.
- Public place of amusement, vested right in, v. 25, p. 300.
- Public vehicle, defined, v. 27, p. 139.
- Public vehicles, livery, v. 26, p. 255.
- Public vehicle, revocation, v. 27, p. 142.
- Real estate broker,
 - Occasional transaction, v. 25, p. 321.
 - Suspension of license, v. 25, p. 305.
 - Records, destruction and storage, v. 24, p. 407.
- Recreational vehicles, v. 26, p. 257.
- Refunds of fees where business has been destroyed, v. 26, p. 296.
- Removal sale, v. 24, p. 269.
- Rooming house, power of council to licence, v. 24, p. 2.
- Sale, goods from distressed source, v. 24, p. 291.
- Second-hand dealers, status of, v. 24, p. 418.
- Sightseeing vehicles, v. 24, p. 386.
- Slaughtering, v. 25, p. 320.
- Sound amplifier vehicle, v. 24, p. 417.
- Special policemen,
 - Carrying weapons, v. 25, p. 225.
 - Procedure for license revocation, v. 27, p. 21.
 - One license for various locations, v. 24, p. 416.
- Taxicab, liability of assignee, v. 26, p. 259.
- Taxi license, revocation for use of firearms, v. 26, p. 261.
- Theatre license, Town Underground Theatre, v. 26, p. 272.
- Undertakers, see that title.
- Vending Machine, one item, v. 24, p. 368.
- Weighmasters license, issued by City when scale is outside of City limits, v. 25, p. 308.

LICENSES—Continued

- Wholesale drug, chemical and patent stores, *v. 25, p. 303.*
- X-Ray laboratory, *v. 24, p. 65.*
- Xeroxing of licenses, *v. 26, p. 266.*

LIENS

- Action for accounting, lien perfection, *v. 27, p. 340.*
- Impounded vehicles, release of to lienholders, *v. 27, p. 13.*
- Lien against public funds—procedure, *v. 26, p. 488.*
- Lien on real estate for cost of demolition, *v. 26, p. 302.*
- Mechanic's lien on public improvements, *v. 25, p. 552.*
- Police auction of vehicles subject to liens, *v. 27, p. 14.*
- Water charges, unpaid, *v. 25, p. 446.*

LIQUIDATED CLAIMS

- Appellate briefs, printing costs, *v. 27, p. 289.*
- Considerations, as, *v. 25, p. 486.*

LIQUOR CONTROL COMMISSIONER

- Authority of, *v. 27, p. 94.*
- Records Power of Commissioner to subpoena, *v. 25, p. 262.*

LIQUOR AND LIQUOR DEALERS

- Age requirements, employees, *v. 27, p. 130.*
- Airports, sale at, *v. 24, p. 301; v. 26, p. 225.*
- Assault by employee of licensee, *v. 26, p. 243.*
- Barmaids, *v. 25, p. 267.*
 - Employment of half-sister as, *v. 26, p. 246.*
- "Barmaid ordinance", order restraining enforcement of, *v. 26, p. 9.*
- Beer Taste Test, in private apartment complex, *v. 26, p. 205.*
- "Bond Night Drawings" in tavern, *v. 24, p. 256.*
- Church, definition of, *v. 24, p. 298.*
- Discotheque, *v. 25, p. 322.*
- Dry district, liquor at party in, *v. 24, p. 295.*
- Elections,
 - Closing of taverns for, *v. 25, p. 261; v. 26, p. 209.*
 - Closing of taverns for special elections, *v. 26, p. 239.*
 - Local option referendum for retail sale of, *v. 26, p. 236.*
 - Retail sales prohibited in 25th precinct, 4th ward, effect of local option proposition, *v. 26, p. 206.*

LIQUOR AND LIQUOR DEALERS—Continued

Fingerprinting requirement, *v. 27, p. 95.*

Gift of wine without purchase prohibited without liquor license, *v. 26, p. 47.*

Intoxication and waiver of rights, *v. 26, p. 25.*

Key clubs, legality of, *v. 24, p. 348.*

Licenses,

Applicant,

Corporate Manager's Statement required, *v. 25, p. 267.*

Non-citizen, *v. 25, p. 258.*

Package goods, petition for, *v. 27, p. 129.*

Petition, annexed areas, *v. 27, p. 129.*

Prior Federal conviction, *v. 24, p. 333.*

Prior petty larceny conviction, *v. 24, p. 337.*

Residence requirements, *v. 25, p. 257; v. 27, p. 123.*

Revocation, Civil Rights Act violation, *v. 27, p. 126.*

Spouse of ineligible licensee, *v. 24, p. 268.*

Tavern in general residence district, *v. 27, p. 202.*

Tax errors, litigation pending, *v. 25, p. 268.*

Boat at Navy Pier, *v. 24, p. 344.*

Class B, *v. 24, p. 312.*

Corporate license holder, changing officers, *v. 25, p. 260.*

Executive clemency, issuance after, *v. 24, p. 337.*

Hotel,

Near a church, *v. 24, p. 341.*

Restaurant, *v. 24, p. 313.*

Late hour, *v. 25, p. 256.*

Licenses,

Contract purchasers, *v. 26, p. 227.*

Fee exemptions for I.I.T., *v. 26, p. 229.*

Issuance of contingent upon possession of lease for term of license, *v. 26, p. 232.*

Issuance to university, *v. 26, p. 229.*

Music and dancing, when required, *v. 26, p. 228.*

Number required, *v. 26, p. 234.*

Out of state manufacturers, *v. 26, p. 236.*

Revocation grounds, *v. 26, p. 241.*

Revocation, one year vacancy period, *v. 26, p. 296.*

Revocation procedure, *v. 26, p. 242.*

Sale in residential district, *v. 26, p. 356.*

Transfer constituting a sale, *v. 26, p. 231.*

LIQUOR AND LIQUOR DEALERS—Continued

- Liquor control commissioner, authority, *v. 27, p. 94.*
Local option referendum, procedure, *v. 27, p. 124.*
Local records act, liquor license applications, *v. 27, p. 48.*
Location near,
 Church, *v. 24, p. 298, p. 326, p. 331.*
 Hospital, *v. 25, p. 253; v. 26, p. 231.*
 Minor defined, *v. 27, p. 121.*
 Nursing home, *v. 24, p. 302.*
 Premises defined, *v. 25, p. 263.*
 School, *v. 25, p. 254.*
 School defined, *v. 27, p. 120.*
 School, modification of prohibition, *v. 25, p. 258.*
 Y.M.C.A., *v. 24, p. 335.*
Minor in the company of an adult, *v. 26, p. 233.*
Minors,
 Employed on premises of retailer, *v. 26, p. 215.*
 Sale in supermarket by, *v. 26, p. 48.*
Minors and women, restricting ordinances, *v. 26, p. 207.*
Municipal Tuberculosis Sanitarium,
 Carried on premises, *v. 24, p. 76.*
 Sale on premises, *v. 26, p. 69.*
Musicians, additional license necessary for, *v. 25, p. 266.*
"Near Beer", no license required, *v. 25, p. 265.*
Numerical limitation, license issue, *v. 27, p. 140.*
Package Goods and consumption on the premises, *v. 26, p. 318.*
Private Club, *v. 24, p. 325, p. 328.*
Private club in "dry" precinct, sale of alcohol by, *v. 26, p. 240.*
Public drunkenness, ordinances pertaining to, *v. 26, p. 212.*
Public place of amusement license, effect of holding, *v. 25, p. 259.*
Public notice required when corporate holder changes officers, *v. 24, p. 260.*
Refund of liquor license fee, *v. 25, p. 263; v. 26, p. 241.*
Renewal rights, assignability of, *v. 24, p. 320.*
Residence of corporate officers, *v. 24, p. 339.*
Retail department stores, *v. 24, p. 315.*

LIQUOR AND LIQUOR DEALERS—Continued

Retail sales prohibition, referendum, *v. 27, p. 128.*

Restaurants, bring packaged liquors to, legality of, *v. 26, p. 209.*

Revocation,

Application by spouse, after revocation, *v. 24, p. 300.*

Federal Wagering Stamp, ownership of, *v. 24, p. 46.*

Hearing rule and procedures for, *v. 24, p. 305, p. 308.*

Service required, *v. 25, p. 265.*

Separate bars on same premises, *v. 24, p. 317, p. 346.*

Union, local, *v. 24, p. 304.*

Liquor Control Commission, power to subpoena records, *v. 25, p. 262.*

Local option, modification of prohibition, *v. 24, p. 271.*

Referendum in 57th precinct, 5th ward, *v. 26, p. 237.*

Referendum to prohibit taverns, but allow package liquor stores, *v. 26, p. 240.*

Revocation, soliciting a prostitute, *v. 26, p. 243.*

Sales, before noon on Sundays, *v. 26, p. 207.*

Separate location; requirements of, *v. 25, p. 254; p. 264.*

Service, denial of, *v. 25, p. 266.*

Sex discrimination in places of business, prohibited, *v. 26, p. 225.*

Solicitation of drinks in taverns, prohibited, *v. 26, p. 43.*

Tavern located on acquired property, *v. 24, p. 671.*

Taverns, motion pictures in, *v. 25, p. 285.*

Teen-age dances on premises after liquor service has ceased, *v. 25, p. 288.*

Theatres, sale of alcoholic beverages in, *v. 26, p. 244.*

View, unobstructed from public way, *v. 25, p. 261; v. 26, p. 226.*

Wine auction, *v. 26, p. 226.*

Women, presence of, when liquor is sold, *v. 26, p. 244.*

Zoning certification, effect of continuing non-conforming use, *v. 27, p. 199.*

M**MASS TRANSPORTATION**

Federal Capital Grants, city eligibility, *v. 27, p. 100.*

MAYOR

Appointment power, *v. 25, p. 65.*

MAYOR—Continued

- City Departments, authority to direct, *v. 27, p. 273.*
- License revocation powers, *v. 26, p. 183.*
- Vacancy, between elections, procedure for filling, *v. 26, p. 4.*

MECHANICS' LIENS

- Lien on public fund, not land, *v. 25, p. 464.*
- Subcontractors, lien of, *v. 25, p. 464.*

MEAT

- Adulteration, use of water to increase weight, *v. 24, p. 248.*
- Frozen meat sandwiches, inspection of, *v. 24, p. 251.*
- Poultry killing establishment, successor owner, license for, *v. 24, p. 60.*
- Scales measuring hundredths of a pound, legality of, *v. 24, p. 248, p. 249.*

MEDIA

- Closed circuit television, regulation of, *v. 27, p. 153.*
- Inspections, educational exemption, *v. 27, p. 153.*
- Litigation, release of information, *v. 27, p. 276.*
- Press cards,
 - Issuance and revocation, *v. 27, p. 29.*
 - Issuance of, *v. 26, p. 39.*
- Television programming, jurisdiction, *v. 27, p. 115.*

MILK AND MILK PRODUCTS

- Cartons, advertising on, *v. 24, p. 243; v. 25, p. 46.*
- Certified raw milk, sale without prescription, *v. 24, p. 243.*
- Cream toppings, regulation of, *v. 26, p. 180.*
- Ice Cream, regulation of, *v. 25, p. 218.*
- Inspection fee, legality of, *v. 25, p. 51.*
- Milk distributor, zoning of, *v. 25, p. 379.*
- Processing by Board of Health, *v. 25, p. 454.*

MINORS

- Curfew regulations, *v. 26, p. 10.*
- Hold harmless agreements, *v. 27, p. 275.*
- Interstate transportation of school children, regulation of, *v. 27, p. 98.*

MINORS—Continued

Liability for court ordered medical exam, *v. 27, p. 24.*

Liability of city, student visitation, *v. 27, p. 275.*

Minor—definition, *v. 26, p. 21.*

Serving of alcohol by—see Liquor and Liquor Dealers.

MOTION PICTURES

Appeal board, obscenity, *v. 26, p. 217.*

Chicago Film Festival, licensing of, *v. 26, p. 291.*

Exhibition in taverns, *v. 25, p. 285.*

Licensing, in general, *v. 26, p. 290.*

Licenses, Town Underground Theatre, *v. 26, p. 272.*

Obscenity, *v. 26, p. 217.*

Review and licensing of, *v. 26, p. 216.*

Review by motion picture appeals board, *v. 26, p. 216.*

Shown via closed-circuit television to hotel guests, *v. 26, p. 269.*

MOTOR FREIGHT TERMINAL

Zoning, regulations covering, *v. 25, p. 339.*

MOTOR FUEL TAX FUND

See also State of Illinois.

Use of, *v. 25, p. 449.*

MOTOR VEHICLES

Abandoned,

Fund distribution from sale of, *v. 25, p. 464.*

New legislation, *v. 25, p. 478.*

Ordinances concerning, *v. 26, p. 397.*

Presumption of, *v. 27, p. 243.*

Removal of, *v. 24, p. 551.*

Retention by police, *v. 27, p. 31.*

Revolving fund for the impounding of, *v. 24, p. 626.*

Advertising panels on, *v. 24, p. 569.*

Ambulance, distinguished from livery, *v. 25, p. 284.*

Ambulances, Mobile Coronary Care Unit, license requirement for, *v. 26, p. 287.*

Armored vehicles, regulation of, *v. 25, p. 281.*

Buses, advertising on, *v. 26, p. 393.*

MOTOR VEHICLES—Continued

Car pools, parking preference for, v. 27, p. 218.

Car rental company, parking violations, v. 27, p. 251.

Chauffeur's license,

Felony conviction, effect on application, v. 27, p. 140.

Issuance to alien resident, v. 26, p. 248.

Issuance to convicted felons, v. 26, p. 249.

Non-discriminatory, testing procedures, v. 27, p. 144.

Processing, v. 25, p. 271.

Revocation for soliciting for prostitute, v. 26, p. 252.

Revocation hearing, mayor's license commission, v. 27, p. 145.

Revocation of, v. 26, p. 254.

Revoked, v. 25, p. 273.

When required, v. 24, p. 363.

City employees—auto liability insurance requirement, v. 26, p. 446.

City owned, necessity of vehicle stickers, fee exempt, v. 26, p. 471.

Confiscation upon gambling arrest, v. 24, p. 258.

Drivers license, disposition after forfeiture, v. 24, p. 367.

Drug addicts, prohibition against driving, v. 24, p. 280.

Emergency vehicles,

Ambulances—Fire Department, charge for use of, v. 26, p. 79.

Ambulances, mobile coronary care, v. 26, p. 80.

Defined, v. 25, p. 283.

Occasional service as, v. 25, p. 284.

Police vehicles, unmarked, v. 26, p. 24.

Police vehicles, without sirens, v. 24, p. 640.

Red flasher light, v. 24, p. 296.

Fire apparatus, special license for, v. 24, p. 365.

Flammable liquids, transportation of, v. 25, p. 233.

Handicapped, public chauffeur applicant, v. 27, p. 132.

Hospital parking, citation for violations, v. 27, p. 247.

Impounded vehicles, release of to lienholders, v. 27, p. 13.

Licensing by City (Wheel Tax),

Construction equipment, v. 24, p. 362.

Disabled veterans, without fee, v. 24, p. 359.

Exemption from,

Board of Education, v. 24, p. 366.

Chicago Transit Authority, v. 24, p. 532.

Church buses, v. 24, p. 365.

MOTOR VEHICLES—Continued

Federal employees, v. 24, p. 360.

Military personnel, v. 24, p. 355.

Funds for street improvement, use of, v. 24, p. 610.

Insurance as prerequisite to, v. 24, p. 412.

Mobile cranes, v. 24, p. 353.

Vehicle license ordinance, applicability, v. 24, p. 356.

License fee, refund of, v. 26, p. 259.

Licenses,

Arrests, effect of, v. 27, p. 131.

Handicapped transportation services, v. 27, p. 141.

Privately operated ambulance, requirements, v. 27, p. 141.

Public vehicles, liability, v. 26, p. 256.

Public vehicles, revocation for use of firearms, v. 26, p. 261.

Requirements of City, v. 26, p. 262.

Sale by financial institutions, v. 26, p. 263.

Xeroxing of, v. 26, p. 266.

Licensing dealers, v. 24, p. 359, p. 361.

Livery licenses, assignment of, v. 27, p. 141.

Medicars, requirement for, v. 27, p. 146.

Mobile food dispensers, v. 25, p. 242, p. 276.

Mobile food dispensers, in general, v. 26, p. 181.

Negligent operation by firemen, v. 26, p. 446.

Parking tax, application to rent free spaces, v. 26, p. 417.

Police auction of vehicles subject to liens, v. 27, p. 14.

Private watch vehicles, v. 25, p. 283.

Public passenger vehicles, regulation of, v. 27, p. 138.

Public vehicle,

Buses,

Separate lane for, v. 24, p. 548.

Sightseeing, v. 24, p. 385.

Stop signs, posting required, v. 26, p. 398.

Upright exhaust, ordinance requiring, v. 24, p. 531.

Weight and traffic regulations, exemption from, v. 24, p. 527.

Use of transistor radio on, v. 26, p. 367.

Defined, v. 27, p. 139.

Horse-drawn cabs, v. 25, p. 274.

Identification of, v. 26, p. 98.

Insurance requirements for, v. 24, p. 263.

MOTOR VEHICLES—Continued**Licenses,**

Assignability, *v. 25, p. 274.*

Policemen licensee, *v. 24, p. 387.*

Residency requirement, *v. 26, p. 257.*

Revocation, non-compliance with safety code, *v. 27, p. 142.*

Limousine service, power to regulate, *v. 27, p. 130.*

Liveries, *v. 26, p. 255.*

Classified as, *v. 25, p. 272.*

License assignability of, *v. 25, p. 279.*

License, transfer of, *v. 25, p. 272.*

Solicitation of passengers, *v. 24, p. 309.*

Urine drug test, right to request, *v. 27, p. 134.*

Use of rented vehicles, *v. 26, p. 256.*

Not-for-hire vehicles, license fee exemption, *v. 27, p. 135.*

Sightseeing, license limitation, *v. 24, p. 386.*

Single trip permit, to and from airport, *v. 25, p. 282.*

Smoking on, prohibition, *v. 24, p. 530.*

Taxicabs,

Advertising on, *v. 26, p. 393.*

Code, effective date of, *v. 25, p. 278.*

Identification markings on, *v. 24, p. 394.*

Insurance, *v. 25, p. 274; v. 26, p. 260.*

Licenses,

Generally, under 1959 ordinance, *v. 24, p. 390.*

Insurance, requirements for self-insurers, *v. 25, p. 280.*

Liability of assignee, *v. 26, p. 259.*

Nominal license, *v. 24, p. 388.*

O'Hare Field, regulation of, *v. 24, p. 386.*

Out of town operators, *v. 24, p. 97.*

Requirements for license, *v. 25, p. 270.*

Revocation for taximeter violation, *v. 26, p. 254.*

Seat belt ordinance, legality of, *v. 26, p. 223.*

Simultaneous livery, *v. 27, p. 143.*

Testing station, use of water fund property, *v. 26, p. 425.*

Tort liability, *v. 24, p. 387.*

Trust held, *v. 26, p. 261.*

Station wagons, use of, *v. 27, p. 133.*

Taximeter, code requirements, *v. 27, p. 134.*

MOTOR VEHICLES—Continued

Recreational vehicle, licensing, v. 26, p. 257.

Repossession, v. 25, p. 245.

Repossession business licensing, v. 24, p. 7.

Salesrooms, regulations of, v. 26, p. 331.

School bus,

Door requirements, v. 24, p. 395, p. 396.

Parking overnight on residential street, v. 26, p. 398.

Serial number, engine, sale requirements, v. 24, p. 288.

Sound amplifiers, type of license for, v. 24, p. 417.

Station wagon as school bus, v. 24, p. 395.

Sticker, resident status determinative of purchase requirement, v. 26, p. 291.

Towing of abandoned vehicles by police, notice requirement, v. 27, p. 14.

Towing, unauthorized private property parking, v. 27, p. 251.

Transport of physically handicapped, v. 27, p. 144.

Trucks,

As Cargo, v. 26, p. 392.

Bakery, itinerant vendor's license, v. 24, p. 404.

Explosives, Transportation of, v. 24, p. 267.

Flammable liquids, transportation of, v. 24, p. 267.

Identification insignia, v. 24, p. 599.

Interstate, state safety sticker, v. 24, p. 419.

Permit for, v. 25, p. 306.

Route designation, legality of, v. 24, p. 275.

Towing,

Regulations governing, v. 25, p. 439.

Solicitation on street by, v. 24, p. 557.

Tariff rates, daily hire, v. 26, p. 411.

Trailers, length limitation on, v. 24, p. 278; v. 26, p. 297.

Weight regulation exceptions, v. 25, p. 443.

Towing,

Automobiles on public ways, v. 27, p. 252.

For violation of street cleaning regulation, v. 26, p. 411.

Regulations governing, v. 26, p. 49.

Vehicle storage, vehicle license, v. 27, p. 137.

Vehicle tax emblem, duplicate, v. 27, p. 145.

Weapons, transportation of, v. 26, p. 189.

MOTOR VEHICLES—Continued

Wheel tax ordinance, nature and scope, v. 26, p. 426.

Wheel tax—residence license fee, v. 26, p. 263, v. 27, p. 259.

MUNICIPAL COURT

Judges, salary increase for, v. 24, p. 145, p. 149.

Juror, compensation for, v. 24, p. 148.

Purchasing Act not applicable to, v. 24, p. 715.

MUNICIPAL COURT AND LAW DEPARTMENT EMPLOYEES' ANNUITY AND BENEFIT FUND

Adopted child, rights of, v. 24, p. 208.

Membership, court clerk's attorney, v. 24, p. 211.

Re-entry by annuitant, effect of, v. 24, p. 207, p. 210.

Special Assistant Corporation Counsel, membership eligibility, v. 24, p. 209.

MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND

Adjudication of claims, v. 27, p. 88.

Alderman,

Contribution to after termination of Civil Service position, v. 26, p. 100.

Effect of reelection on retirement status, v. 26, p. 124.

Chicago Rapid Transit Company, annuity credit for service to, v. 26, p. 126.

Civil Defense Corps employees, membership in, v. 24, p. 156.

Disability payments, one year requirement, v. 26, p. 123.

Duty disability for disease from cause unknown, v. 25, p. 147.

Federal Funds, employees paid by, v. 24, p. 155.

House of Correction Pension Fund, consolidation of, v. 26, p. 214.

Incompetent, Payment to hospital where residing, v. 24, p. 133.

Insurance plan, discrimination against women, unequal survivor benefits, v. 26, p. 126.

Investments, v. 25, p. 141.

Land Clearance Commission employee, v. 25, p. 136.

MUNICIPAL EMPLOYEES' ANNUITY AND BENEFIT FUND—Continued

Mandatory participation, *v. 27, p. 83.*

Member, employee paid by voucher, *v. 24, p. 156.*

Municipal Tuberculosis Sanitarium employees, retirement age, *v. 25, p. 56.*

Overtime compensation, *v. 25, p. 178.*

See also Salaries.

Physician, consulting, M.T.S., eligibility of, *v. 24, p. 157.*

Reciprocal Act, Computation under, *v. 24, p. 159.*

Re-enter service, effects of, *v. 25, p. 136.*

Refund,

Assignment of, *v. 26, p. 128.*

Effect of re-entry in service on, *v. 26, p. 132.*

Refunds for Department of Correction Employees, *v. 26, p. 129.*

Retirement board, authority to require participation in hospitalization plan, *v. 26, p. 123.*

Salary, computation of, *v. 25, p. 137.*

Service credit for pension purposes, *v. 27, p. 81.*

Validity of Illinois Pension Code, Article Eight, *v. 27, p. 82.*

Widow's award, *v. 24, p. 158.*

Wrongful removal from employment, *v. 26, p. 133.*

Year, defined, *v. 25, p. 140.*

MUNICIPAL TUBERCULOSIS SANITARIUM

Annuitant, performing part-time services, *v. 25, p. 132.*

Authority to charge for services unrelated to tuberculosis, *v. 27, p. 44.*

Board, scope of authority, *v. 25, p. 55.*

Board of Directors, role in phaseout, *v. 27, p. 45.*

Chapel maintenance, funds for, *v. 24, p. 73.*

Chapel use, multidenominational, *v. 27, p. 316.*

Consent forms, *v. 26, p. 63.*

Deceased, claiming bodies of, *v. 25, p. 59.*

Elevator, authority to purchase, *v. 24, p. 77.*

Employees,

Hiring of, *v. 25, p. 58.*

Hours and working conditions, *v. 24, p. 74.*

Injuries, liability for, *v. 25, p. 56.*

Retirement Age, *v. 25, p. 56.*

"Entertainment trust" fund, disposal of, *v. 26, p. 68.*

MUNICIPAL TUBERCULOSIS SANITARIUM—Continued

Examination for tuberculosis, authority to compel, v. 26, p. 61.

Hospital Emergency Bill Act, v. 25, p. 57.

Identification badge, restrictions on use of, v. 26, p. 65.

Isolation, penalty for refusal, v. 26, p. 62.

Liability, from unauthorized use of private vehicles, v. 24, p. 59.

Liquor, sale on premises of sanitarium, v. 26, p. 69.

Mobile X-ray unit, flashing lights in, v. 24, p. 260.

Money purchase annuity, v. 27, p. 81.

Park District employees, hiring part-time, v. 24, p. 75.

Patients,

Charges for services, v. 26, p. 66.

Discharge of unwilling patient, v. 26, p. 67.

Dying intestate, disposition of personal property, v. 26, p. 67.

From another country, hospitalization of, v. 26, p. 61.

Handling of monies belonging to, v. 26, p. 67.

Searching of, v. 24, p. 79.

Physicians Consulting Annuity Fund eligibility, v. 24, p. 157.

Physicians, medical malpractice insurance, v. 26, p. 64.

Pregnant Employees, management of, v. 26, p. 65.

Surgery, consent for, v. 25, p. 58.

Treatment, scope of, v. 26, p. 60.

Vacation Time allowable, v. 26, p. 63.

Visitors,

Prosecute for carrying liquor, v. 24, p. 76.

Searching of, v. 24, p. 79.

Volunteer worker, v. 24, p. 78.

N**NATIONAL AIRCRAFT NOISE ABATEMENT COUNCIL**

Funds for joining, v. 25, p. 470.

NARCOTICS

Addicts, prohibition against driving, v. 24, p. 280.

NAVY PIER

Auditorium leases, v. 27, p. 316.

NAVY PIER—Continued

Electrical system, ownership of, v. 24, p. 658.

Exhibition of gaming equipment, v. 27, p. 111.

Installation of capital improvements, v. 27, p. 375.

Lease of the facilities, city council authorization required, v. 26, p. 465.

Lease of, procedure, v. 27, p. 304.

Proposed leases, approval by City Comptroller and City Council, v. 26, p. 431.

NEWSPAPERS

See Media, v. 26, p. 39.

NUISANCES

Abandoned vehicles, ordinances concerning, v. 24, p. 551.

Abatement, cost as a lien, v. 24, p. 654.

Air conditioning unit, window, v. 24, p. 450.

Aircraft noise pollution, v. 26, p. 505.

Buildings,

Boarded up, v. 24, p. 464.

Demolition of, v. 25, p. 341.

Lacking heat, v. 26, p. 299.

Unsafe, demolition of, v. 24, p. 433.

Demolition of property, statutory authority for, v. 25, p. 332.

Drainage, surface, on private property, v. 24, p. 287.

Dumping on vacant property, v. 24, p. 273.

Dutch Elm Disease, v. 24, p. 293; v. 25, p. 247.

Enforcement of refuse ordinances, v. 27, p. 118.

Flagpoles within Lake Shore Drive, right-of-way, v. 26, p. 384.

Railroad switch tracks, ordinance to abate, v. 24, p. 519.

Raising of bees within the city, v. 27, p. 43.

Regulation of, by city, v. 25, p. 234.

Trees, diseased, v. 25, p. 247.

Vehicle unlawfully parked, v. 25, p. 434.

O**ORDINANCES**

Abandoned motor vehicles, regulation of, v. 25, p. 478; v. 26, p. 397.

ORDINANCES—Continued

- Advertising material, restrictions on distribution, *v. 25, p. 422.*
- Advertising signs, amendment to zoning ordinance, *v. 25, p. 426.*
- Advertising sign, defined by zoning ordinance, *v. 25, p. 381.*
- Air Conditioners,
 In general, *v. 26, p. 204.*
 Installation and regulation, *v. 26, p. 204.*
- Airport regulations, sanctions, violation, *v. 27, p. 362.*
- Airport use agreement, *v. 25, p. 612.*
- Alleys, vacation of, *v. 27, p. 219.*
- Amendment, definition of "message establishment", *v. 27, p. 185.*
- Amusement Tax, exempt organizations, *v. 26, p. 271.*
- Appropriations, *v. 25, p. 11.*
- Assemblage of infamous people, *v. 25, p. 36.*
- Assignability of public passenger vehicle license, *v. 25, p. 274.*
- Authority for construction of transit facilities, *v. 25, p. 404.*
- Banks, power of City to license and tax, *v. 24, p. 410.*
- Barber shops, defined, *v. 25, p. 308.*
- Barmaid Ordinance, order restraining enforcement of, *v. 26, p. 9.*
- Barmaids, prohibited, *v. 25, p. 267.*
- Billiard commission, lack of necessity for, *v. 25, p. 300.*
- Boilers, regulation of, *v. 26, p. 210.*
- Book stores charging admission, *v. 26, p. 266.*
- Building violations, prosecution of, *v. 26, p. 300.*
- Cabaret, defined, *v. 25, p. 322.*
- Calumet Skyway Toll Bridge, approval of, *v. 24, p. 8.*
- "Car Hikers", unlawful, *v. 25, p. 411.*
- Chicago Employer's Expense Tax, liability of government units, *v. 27, p. 265.*
- Chicago Housing Authority Act, *v. 25, p. 216.*
- Chicago Landmark Ordinance, owner's consent, *v. 27, p. 54.*
- Chicago Parking Facility Revenue Bond, *v. 25, p. 444.*
- Chicago Urban Transit District Annual Appropriation Ordinance, *v. 26, p. 421.*
- Civil Defense Corps, authority for, *v. 25, p. 72.*
- Closed circuit television, regulation of, *v. 27, p. 153.*
- Condominium conversion moratorium, *v. 27, p. 204.*
- Condominium ordinance, report provision, *v. 27, p. 176.*

ORDINANCES—Continued

- Confession of judgment clauses, proposal to restrict, v. 27, p. 1.
- Contraceptives, regulation of sale of, v. 25, p. 249.
- Contracts terminating in subsequent fiscal year, prohibition against, v. 25, p. 573.
- Construction on loss of record, proposal to restrict, v. 24, p. 495.
- C.T.A. Board, Authority of, v. 25, p. 398.
- Curfew,
 - Regulations, v. 26, p. 10.
 - Amended, v. 25, p. 247.
- Currency Exchanges, proposal to license, v. 24, p. 429.
- Day-care center, defined, v. 25, p. 323.
- Demolition of nuisances, statutory authority for, v. 25, p. 332.
- Desk-clerk Ordinance, applicability of, v. 24, p. 274; v. 25, p. 236.
- Development ordinances, v. 25, p. 1.
- Diseased trees as nuisance, v. 25, p. 247.
- Disorderly conduct,
 - Constitutionality of ordinance, v. 26, p. 11.
 - In general, v. 26, p. 212.
 - Validity affirmed, v. 26, p. 6.
- Disorderly house ordinance, unconstitutional, v. 27, p. 149.
- Disposition of transit funds, v. 25, p. 405.
- Driveway permit requirements, v. 27, p. 236.
- Dry cleaning establishments, regulation of, v. 26, p. 329.
- "Electioneering", rules concerning political signs on private residential property, v. 26, p. 222.
- Electrical equipment,
 - Defined, v. 25, p. 344, p. 559.
 - Exemption from code regulations, v. 27, p. 165.
- Employer's expense tax ordinance, v. 27, p. 255.
- Employment agency applicant fees, proposal to prohibit, v. 27, p. 2.
- Employment requirement, v. 25, p. 65.
- Equal employment, v. 25, p. 8.
- Fair Housing Ordinance,
 - Application, v. 26, p. 163.
 - Grant of authority, v. 27, p. 105.
 - Conciliation agreements-procedure, v. 26, p. 161.
 - Constitutionality of, v. 25, p. 15.
 - Panic peddling, v. 26, p. 218.

ORDINANCES—Continued

- Fees for hospital services, *v. 25, p. 50.*
- Firearms, laws pertaining to non-citizens, *v. 26, p. 197.*
- Fire Department Facility, construction of, *v. 27, p. 376.*
- Fire extinguishers in multiple dwellings, code interpretation, *v. 25, p. 347.*
- Fire prevention, *v. 25, p. 73.*
- Fireworks, defined, *v. 25, p. 239.*
- Flammable liquids, class defined, *v. 25, p. 337.*
- Floor area
 - Defined, *v. 25, p. 334.*
 - Ratio provisions, guidelines, *v. 27, p. 180.*
- Franchise Ordinance, Commonwealth Edison, *v. 27, p. 213.*
- Frontage consents, unconstitutional, *v. 24, p. 515.*
- Full view of billiard room, *v. 25, p. 297.*
- Gambling and Lotteries prohibited, *v. 25, p. 231.*
- General brokers, defined, *v. 25, p. 323.*
- Gross receipts, defined, *v. 25, p. 456.*
- Gun registration,
 - Enforcement, *v. 26, p. 190, p. 191.*
 - Invalid when weapon prohibited by law, *v. 27, p. 109.*
 - Revocation of, *v. 26, p. 193.*
 - Turn-in and impounding for violation of, *v. 26, p. 185.*
- Handbills, responsibility for, *v. 25, p. 425.*
- Harbor pollution control, *v. 26, p. 78.*
 - Enforcement of, *v. 26, p. 77.*
- Heating, *v. 25, p. 242.*
- Helicopters, regulation of, *v. 25, p. 604.*
- Heliport Ordinance, *v. 26, p. 499.*
 - Proposed amendment, *v. 26, p. 502.*
- Hospital,
 - Defined, *v. 25, p. 322.*
 - Desegregation, enforcement of, *v. 24, p. 281.*
 - Emergency Bill Act, *v. 25, p. 57.*
- Hotel, defined, *v. 25, p. 331.*
- Hotel occupancy tax, *v. 26, p. 415.*
- Hours for sale of liquor, restriction on, *v. 25, p. 264.*
- Housing Code, effect of failure of City to enforce, *v. 26, p. 313.*
- H.U.D., authority to execute forms for, *v. 26, p. 74.*
- Improvements, defined, *v. 25, p. 218.*
- Ingress and egress, right to, *v. 25, p. 412.*

ORDINANCES—Continued

- Intersection, defined, *v. 25, p. 441.*
- Jurisdictional extent of Municipal Code, *v. 25, p. 15.*
- Land Clearance Commission, authority for formation of, *v. 25, p. 212.*
- Land Conveyances, municipalities, *v. 27, p. 315.*
- Landfill sites, location of, *v. 27, p. 203.*
- Laundries, self-service, regulation of, *v. 26, p. 214.*
- Licensing Provisions, general scope of, *v. 25, p. 305; v. 26, p. 288.*
- Liens against City, procedure for, *v. 25, p. 471.*
- Lighting of alley by abutting owner, invalid, *v. 24, p. 553.*
- Littering, *v. 25, p. 243.*
- Loading platforms, exclusive use of, *v. 27, p. 228.*
- Loitering, *v. 25, p. 243.*
- Military preference in employment, *v. 25, p. 118.*
- Minimum wages, City of Chicago, *v. 26, p. 215.*
- Misrepresentation, *v. 25, p. 32.*
- Misrepresentation of real estate conditions, lack of necessity for, *v. 24, p. 234.*
- Motion pictures,
 - Appeal board authority over, *v. 26, p. 217.*
 - Licensing of, *v. 26, p. 290.*
 - Regulation of, *v. 25, p. 298.*
 - Review and licensing of, *v. 26, p. 216.*
- Motor Freight Terminal, defined, *v. 25, p. 339, p. 345.*
- Municipal Buildings Bond Ordinance, *v. 25, p. 490.*
- Municipal Code,
 - Amendments, publication of, *v. 24, p. 110.*
 - Amendments, retroactivity of, *v. 25, p. 75.*
 - Quasi-criminal in character, *v. 26, p. 216.*
- Newspaper sales, regulation of, *v. 26, p. 387.*
- O'Hare Field,
 - Acquisition of land for, *v. 25, p. 614.*
 - Zoning regulations, *v. 26, p. 353.*
- Open Occupancy, power to pass, *v. 25, p. 3.*
- ORD Revenue Bond Ordinances, *v. 26, p. 503.*
- Parking, defined, *v. 26, p. 403.*
- Parking Facility,
 - Defined, *v. 25, p. 444.*
 - Regulation of sale by city, *v. 26, p. 380.*
- Parking Facility Ordinances,
 - Funds Governed by, *v. 25, p. 473.*

ORDINANCES—Continued

- Regulations concerning sale of property, v. 26, p. 465.
- Surplus funds and facilities, use of, v. 26, p. 458.
- Parking fines, in general, v. 26, p. 402.
 - Applicable to condominium garage facility, v. 26, p. 407.
 - Applicability to F.B.I., v. 26, p. 156.
- Pawnbrokers, regulation of, v. 25, p. 233.
- Pay toilet prohibition, v. 27, p. 170.
- Peddlers,
 - In general, v. 26, p. 389.
 - Prohibition in designated areas, v. 27, p. 114.
 - Regulation of, v. 25, p. 237, p. 276.
- Phosphate ordinance, clarification, v. 26, p. 79.
- Picketing, v. 26, p. 219.
- Pigeons, homing, proposed regulation of, v. 24, p. 22.
- Planned development,
 - Regulations governing, v. 25, p. 371.
 - Single control requirement, v. 26, p. 344.
- Plumbers Act, constitutionality of, v. 26, p. 294.
- Police Board, jurisdiction and power, v. 27, p. 28.
- Powers and possibilities, effects of, v. 25, p. 504.
- Premises, defined for liquor purpose, v. 25, p. 254.
- Press cards, issuance and revocation, v. 27, p. 29.
- Private watchman and police, regulation of, v. 25, p. 315.
- Public drunkenness, v. 26, p. 212.
- Public garage,
 - Defined, v. 25, p. 347.
 - Rates, posting of, v. 26, p. 404.
- "Public information" centers, ordinance proposed, v. 26, p. 97.
- Public passenger license, when required, v. 25, p. 400.
- Public places of amusement, defined, v. 25, p. 292.
- Purchasing Act, v. 25, p. 548.
- Reduced fares for senior citizens, v. 25, p. 398.
- Refuse and Garbage collection, enforcement, v. 27, p. 118.
- Regulation of fireworks and firearms, v. 25, p. 229.
- Residence, determining for purpose of liquor license, v. 25, p. 257.
- Resisting arrest, constitutionality of ordinance, v. 26, p. 11.
- Resolution, legal effect, v. 27, p. 5.
- Retail tobacco dealer, defined, v. 25, p. 314.

ORDINANCES—Continued

Retroactive application, v. 26, p. 284, v. 27, p. 136.

Retroactive effect of,

Electrical Code, v. 24, p. 462; v. 25, p. 481.

Fire provisions, v. 24, p. 454.

Plumbing provisions, v. 24, p. 438.

Sales of hardware, license for, v. 25, p. 311.

Service drive, defined, v. 25, p. 436.

Sewers, regulation of, v. 25, p. 529.

Short wave radio, restrict possession of, v. 24, p. 15.

Signs, regulation by Zoning Ordinance, v. 25, p. 369.

Skyway Ordinances, v. 25, p. 14.

Skyway, toll increases, approval needed, v. 25, p. 13.

Smoking on public vehicles, validity of, v. 24, p. 530.

Smoking, public places, v. 27, p. 115.

Snow clearance, no power to enact, v. 26, p. 222.

Snow removal parking ordinance, sign posting required, v. 24, p. 601.

Soliciting ordinance, not applicable to newspaper, v. 24, p. 236.

Special meeting, call for, v. 25, p. 10.

Special ordinances for laying down track, v. 25, p. 393.

Special policemen,

Defined, v. 25, p. 315.

Scope of authority, v. 27, p. 32.

Standard refuse container, code provisions governing, v. 25, p. 250.

State statute, in conflict with, v. 24, p. 70; v. 25, p. 439.

Statute of Limitations, effect on liability of City, v. 25, p. 479, p. 487.

Statute, ordinance in conflict with, v. 25, p. 594.

Street names, in general, v. 26, p. 467.

Sunday closing ordinance, proposed, v. 24, p. 282.

Swimming pools, in general, v. 26, p. 223.

Taxicab Code amendment, effective date of, v. 25, p. 278.

Taxicab seatbelt ordinance, legality of, v. 26, p. 223.

Taxpayer, defined, v. 25, p. 456.

Tear gas pens, prohibited, v. 26, p. 202.

Traffic, v. 26, p. 407.

Trailer camp ordinance, v. 25, p. 357.

Transportation improvements through bond issue, v. 25, p. 500.

ORDINANCES—Continued

- Upright exhaust on buses, validity of, v. 24, p. 531.
- Utility Tax, Exemptions from, v. 25, p. 460.
- Utility Tax on receipts, v. 25, p. 456.
- U-Turns, v. 25, p. 438.
- Vacation of alley, recording of ordinance for, v. 26, p. 382.
- Weapon control, v. 26, p. 184.
- Weapons,
 - Registration by pawnbroker, v. 26, p. 197.
 - Regulation of, v. 25, p. 221; v. 26, p. 184.
- Wheel tax ordinances, v. 26, p. 426.
- Wheel tax—residence, v. 26, p. 263; v. 27, p. 259.
- Wholesale drug, chemical and paint stores, defined, v. 25, p. 303.
- Working hours, regulation of, v. 25, p. 239.
- Zoning—see that title,
 - Amendment, unconstitutional, v. 25, p. 368.
 - Basis of Power to pass, v. 25, p. 373.
 - Church, defined by prior opinions, v. 25, p. 363.
 - Church in a restricted service district, v. 26, p. 327.
 - Comprehensive, effective date of, v. 24, p. 481.
 - Cumulative nature of, v. 25, p. 376.
 - For sale signs, v. 26, p. 396.
 - Frontage consents, validity of, v. 25, p. 386.
 - Halfway Home, v. 26, p. 335.
 - Intent of, v. 25, p. 382.
 - Interpretation of, v. 25, p. 372.
 - Lot, defined, v. 25, p. 369.
 - Lots, division of, v. 25, p. 376.
 - Permit for remodeling, nonconforming structure, v. 27, p. 184.
 - Procedure to consider applications, v. 26, p. 319.
 - Public open space defined, v. 25, p. 353.
 - Scope of, v. 25, p. 353.
 - Signs near expressways, v. 25, p. 423.
 - Cumulative nature of, v. 25, p. 376.

P**PARKING**

- Abandoned cars, presumptions, v. 27, p. 243.
- Alley entrance to lot, v. 25, p. 410.

PARKING—Continued

Angle parking, service street declaration required, *v. 25, p. 440.*

Building permit revocation for non-compliance with parking regulation, *v. 26, p. 314.*

Car pools, preferential treatment, equal protection, *v. 27, p. 218.*

Car rental companies, liability for parking violations, *v. 27, p. 251.*

City owned, tax on leaseholds, *v. 27, p. 266.*

Cook County Hospital, citations, *v. 27, p. 247.*

Defined, *v. 26, p. 403.*

Deliveries, stopping for in "No Parking Zone", *v. 25, p. 433.*

Facility bonds, *v. 25, p. 494.*

Facility as "Special Use", *v. 25, p. 365.*

Facility,

Regulation of sale of, *v. 26, p. 465.*

Sale by city, *v. 26, p. 30.*

Facilities employees, under Fair Labor Standards Act, *v. 26, p. 401.*

Fines, uniformity of, *v. 26, p. 402.*

Loading zone fee, *v. 26, p. 385.*

Lots,

Alley, use as entrance to, *v. 24, p. 555.*

Back yard, *v. 24, p. 494.*

City Owned,

Advertising space, sale or lease of, *v. 24, p. 556.*

Billboards, lease space for, *v. 24, p. 568.*

Claim check, wording of, *v. 24, p. 586.*

Coin operated, licensing of, *v. 24, p. 427.*

Construction of a governmental function, *v. 24, p. 583.*

Elevator, Electrical interlocks for, *v. 24, p. 585.*

Leasing for non-parking purpose, *v. 24, p. 665.*

Liability for loss or damage in, *v. 24, p. 587.*

License for, *v. 24, p. 403.*

Policing of, *v. 24, p. 625.*

Private, licensing of, *v. 24, p. 430.*

Rates,

Posting of, *v. 26, p. 404.*

Power to increase, *v. 24, p. 588.*

Shopping Centers, patrol of, *v. 27, p. 244.*

Special assessment financing of, *v. 24, p. 619.*

PARKING—Continued

Termination of, *v. 27, p. 244.*

Title to, *v. 25, p. 473.*

Employees—application of the Federal Fair Labor Standards Act, *v. 26, p. 153.*

Installation of hydraulic lifts, *v. 26, p. 350.*

Private, coin operated licensing of, *v. 26, p. 404.*

Set Back requirements, *v. 26, p. 405.*

Used by another party, zoning effect of, *v. 25, p. 373.*

Meter Maid program, *v. 25, p. 444.*

Meters,

Conversion of, Funds for, *v. 24, p. 656.*

Covers, Signifying "no parking", *v. 26, p. 402.*

Fund, Police Department percentage of, *v. 24, p. 625.*

Purchase and Maintenance, Fund for, *v. 24, p. 633.*

Removal for overtime violation, *v. 24, p. 596.*

Snow removal ordinance, Effect of, *v. 24, p. 598.*

Time limit, changing, *v. 24, p. 592.*

Trucks in metered zone, *v. 24, p. 581.*

Two and three hour limits, *v. 24, p. 595.*

Unexpired time, use of, *v. 24, p. 604.*

Off-street Parking Facilities, use of, *v. 25, p. 428.*

Off-street, plot plan data required, *v. 24, p. 576.*

Off-street parking requirements, *v. 26, p. 339.*

Overdue parking tickets, notice of, *v. 27, p. 252.*

Parking space, in relation to floor area, *v. 25, p. 334.*

Parking structure—exceeding rear yard height regulation, *v. 26, p. 339.*

Parking tax, applicability to F.B.I., *v. 26, p. 156.*

Parkways, leasing for parking, *v. 24, p. 593.*

Regulations,

Bus Stop Signs, posting required, *v. 26, p. 398.*

Fire escape, under, posting required, *v. 24, p. 602.*

Intersection, interpreted for ordinance purposes, *v. 25, p. 441.*

Legal holidays, designation of, *v. 24, p. 600.*

Presumption of owner's responsibility for violation, *v. 25, p. 431.*

School zone, in, *v. 25, p. 441.*

Signs, requirement for posting of, *v. 24, p. 602.*

Snow removal ordinance, posting of signs required, *v. 24, p. 601.*

Street cleaning, posting of permanent signs, *v. 26, p. 410.*

PARKING—Continued

Temporary parking, *v. 25, p. 440.*

Trailers, House, *v. 24, p. 598; v. 25, p. 357.*

Trucks,

 Making deliveries, *v. 25, p. 433.*

 On gas station premises, *v. 24, p. 484.*

 On vacant residential lot, *v. 24, p. 581.*

Unattended running vehicle, illegality of, *v. 25, p. 445.*

“Resident Parking Only”, justification for, *v. 27, p. 250.*

Revenue Bonds, accumulated funds, transfer of, *v. 26, p. 431.*

Roof of garage not licensed as lot, *v. 24, p. 398.*

Service station, used for, *v. 25, p. 337.*

School bus, overnight on residential street, *v. 26, p. 398.*

Shuttle buses, fare charge, *v. 27, p. 298.*

Skyway, lease prohibited, *v. 26, p. 387.*

Street cleaning regulations, towing of cars for violation of, *v. 26, p. 411.*

Subsidy, by private agency, *v. 25, p. 432.*

Tax,

 Applicability to state owned vehicles, *v. 26, p. 406.*

 Application to rent free spaces, *v. 26, p. 417.*

 Condominium garage facility, *v. 26, p. 407.*

 Exemption for tenant parking, *v. 26, p. 407.*

 Jacobs v. Chicago, constitutionality, *v. 26, p. 406.*

 Liability of city for, *v. 26, p. 416.*

Tickets, removal of, *v. 25, p. 435.*

Towing of cars for violating street cleaning regulations, *v. 26, p. 411.*

Towing of personal cars, public ways, *v. 27, p. 252.*

Towing Signs, posting requirements, *v. 27, p. 250.*

Towing,

 Unauthorized parking, private property, *v. 27, p. 251.*

 Display of signs, prerequisite, *v. 27, p. 252.*

Trailers, during strike, *v. 25, p. 434.*

Underground parking, *v. 25, p. 207.*

Uniform Parking Sign, requirements for, *v. 27, p. 248.*

Use of Chicago Police tickets, *v. 25, p. 431.*

Use of private parking lot, *v. 25, p. 428.*

Violations in private lot, *v. 26, p. 405.*

Wacker Drive, lower level, *v. 24, p. 577.*

Zoning, special use, *v. 25, p. 362.*

PARKING METERS

Covers signifying "no parking", v. 26, p. 402.

Repair, for damages during snowfall, v. 25, p. 579.

PARKS AND PLAYGROUNDS

Gas lighted standards, In, v. 25, p. 520.

Grant Park, relocation of Stock Exchange arch in, v. 26, p. 311.

Jurisdiction and control over, v. 26, p. 159.

PAWNBROKERS

Interest, limits on, v. 25, p. 233.

Interest, publication of limits, v. 25, p. 233.

PEDDLERS

Mobile food dispensers,

Frozen desserts, regulations, v. 26, p. 180.

Prohibition in school vicinity, v. 26, p. 179.

Regulation of, v. 26, p. 181; v. 27, p. 108.

Ordinances concerning door to door salesmen, v. 26, p. 389.

Prohibition in designated areas, legality of, v. 27, p. 114.

Regulation of, v. 24, p. 276; v. 25, p. 237, p. 312.

Sidewalk food vendors, prohibited, v. 25, p. 221.

Statutory regulation of, v. 25, p. 276.

PENSION FUNDS

Real property, purchase of, v. 26, p. 435.

PERMITS

Building,

Bus shelter, required, v. 26, p. 383.

Chicago Park District, installations, v. 24, p. 228.

Electrical work by home owner, v. 24, p. 440.

Extension after partial performance, v. 24, p. 463.

Free permits for University of Chicago, v. 25, p. 340.

Flagpole installation, v. 27, p. 222.

Flammable liquid tank, v. 25, p. 337.

Foundation only, v. 24, p. 457.

Gasoline tank in apartment garage, v. 24, p. 485.

Ice storage unit, v. 24, p. 432.

PERMITS—Continued

- Information requests, policy, v. 27, p. 169.
- Issue after construction, right to, v. 24, p. 459.
- Lots, unrecorded, construction on, v. 24, p. 482.
- "Piece Meal" issuance, v. 24, p. 460.
- Plumbing repairs, minor, v. 24, p. 424.
- Propane storage tank, v. 24, p. 451.
- Public improvement site, proposed, issuance within, v. 24, p. 445.
- Refusal pending legislative action, v. 24, p. 465.
- Unimproved lots, v. 24, p. 409.
- Vested right to issuance of, v. 24, p. 465.
- Vested right in zoning variation, v. 24, p. 505.
- Withholding of, v. 25, p. 343.
- Zoning amendment, effect on, v. 24, p. 484, p. 491.
- Burial, out-of-state certificates, v. 24, p. 62.
- Combination of vehicles for, v. 25, p. 313.
- Combustion Boilers, v. 27, p. 220.
- Driveway, v. 25, p. 531.
 - Crossing of city property, v. 27, p. 236.
 - For C.T.A., v. 25, p. 401.
 - Jurisdiction offer, v. 24, p. 423; v. 25, p. 325, p. 403.
- Driveway fee,
 - Applicable to C.T.A., v. 25, p. 397.
 - C.T.A., payment requirements, v. 27, p. 212.
 - In general, v. 26, p. 283.
- Driveway permit, on Michigan Avenue, v. 25, p. 413.
- Driveway permit requirement, retroactive application of, v. 26, p. 284.
- Electrical, C.T.A., contractor, v. 24, p. 540.
- Electrical equipment, installation of, v. 25, p. 344.
- Excess weight, trucks, v. 25, p. 306.
- Fireworks, display, v. 26, p. 285.
- Motion pictures, v. 25, p. 285, p. 298.
- Newspaper stands, regulation by City of Chicago, v. 26, p. 292.
- Oil Storage Tanks, v. 25, p. 329.
- Purchase of weapons, v. 25, p. 227.
- Sewer, right to, secured by special assessment, v. 24, p. 676.
- Signs, Revocation of, v. 24, p. 493.
- Single trip permits, v. 25, p. 282.
- Trailers, limitation on length, v. 24, p. 278.
- Water service, outside City, transferability of, v. 24, p. 673.

PERMITS—Continued

Weapons, purchase of, v. 26, p. 184.

Weightmaster, v. 25, p. 308.

Wharfing privileges, v. 26, p. 274.

PLANNED DEVELOPMENT

Carl Sandburg Village, public garage license, regulations concerning, v. 26, p. 286.

Classification, R-4 property, v. 27, p. 203.

Defined, v. 25, p. 370.

Floor area ratio requirements, guidelines, v. 27, p. 180.

Michigan Square venture contract modification, v. 27, p. 195.

Notice of new construction, adjacent owners, v. 27, p. 174.

Open space, sale of, v. 26, p. 345.

Open space land, acquired from planned development, construction on, v. 27, p. 178.

Ownership requirement for application, v. 27, p. 182.

Restrictions on redevelopment, covenants running with land, v. 26, p. 162.

Revision of boundaries, v. 25, p. 371.

Single Control Requirement, v. 26, p. 344.

State owned property, acquisition of, v. 27, p. 314.

POLICE, DEPARTMENT OF

Abandoned Automobiles, retention of, v. 27, p. 31.

Accident after arrest, liability for, v. 24, p. 637.

Accident reports to Corporation Counsel, v. 24, p. 42.

Advertising police magazine sales, v. 27, p. 20.

Airport terminal regulations, enforcement of, v. 27, p. 359.

Ammunition, storage of small arms, v. 26, p. 188.

Arrest, v. 25, p. 33.

Boundary determining right to, v. 25, p. 33.

Immunity to and from court, v. 24, p. 43.

Overt Act, necessity for, v. 25, p. 38.

Pickers, v. 25, p. 31.

Violation of Federal Law, authority to arrest, v. 27, p. 22.

Arrest information, to private employers, v. 26, p. 14.

Arrest record,

Disqualification for criminal conduct, v. 27, p. 27.

Effect on application for employment, v. 26, p. 101.

POLICE, DEPARTMENT OF—Continued

Expunging of interpretation of statute, v. 26, p. 7, p. 8.

Expungement of, v. 27, p. 33.

Arsenal, storage of obsolete weapons, v. 25, p. 590.

Assemblage of infamous people, v. 25, p. 36.

Auction of vehicles subject to lien, v. 27, p. 14.

Automobiles, destruction of, v. 27, p. 279.

Auxiliary police officers, v. 26, p. 41.

Bagetelle and Pigeonhole, authority to confiscate equipment, for, v. 25, p. 295.

"Barmaid ordinance", order restraining enforcement of, v. 26, p. 9.

Barratry, Facts constituting, v. 24, p. 50.

Benevolent Association, right to negotiate, v. 25, p. 26.

Burglary tools, possession of, v. 26, p. 10.

Chicago Policemen's Benevolent and Welfare Association,
See that title.

Civilian Review Boards, v. 26, p. 36.

Confiscated property, post conviction retention of, v. 26, p. 12.

"Courtesy Card", frivolous advertising, Legality of, v. 24, p. 565.

Criminal conviction charge, withdrawal of, v. 27, p. 24.

Crossing guards, vacation and sick leave, v. 24, p. 122.

Curbing vehicles for air pollution, v. 25, p. 37.

Curfew regulations, possible conflict between state and city,
v. 26, p. 10.

Custodian, release estate property, v. 24, p. 41.

Death Benefit Fund, procedure for award, v. 27, p. 85.

Democratic National Convention—see that title.

Departmental records, reproduction expenses, v. 27, p. 27.

Disability benefits and pregnancy, v. 26, p. 33.

Discharge proceedings, ambiguous testimony, v. 27, p. 22.

Disciplinary procedures, proposed amendment, v. 26, p. 30.

Disciplinary procedure, examination of past records, v. 27,
p. 20.

Disclosure of economic interest, v. 26, p. 31.

Disorderly conduct, constitutionality of ordinance, v. 26, p. 11.

Dogs,

Disposal of, v. 26, p. 29.

Retired, procurement of insurances by donee of, v. 26,
p. 28.

POLICE, DEPARTMENT OF—Continued

- Entrapment, *v. 25, p. 41.*
Environmental Control—see that title, *v. 26, p. 75.*
Evidence, stolen from police, *v. 27, p. 282.*
Executives, not included in pension fund, *v. 25, p. 158.*
Excessive weight vehicle, authority over, *v. 25, p. 306.*
Federal copyright law, enforcement of, *v. 27, p. 23.*
Film review, continuance of, *v. 27, p. 34.*
Fingerprint cards, admissibility of photographic copies of, *v. 26, p. 14.*
Firearm registration violations, evidence necessary to convict, *v. 26, p. 191.*
Firing range outdoors, legality of, *v. 26, p. 46.*
Foreign consulate, courtesy card for, *v. 24, p. 580.*
Funeral escort service, legality of, *v. 24, p. 40.*
Gambling, automobile used in connection with, *v. 24, p. 258.*
Gift of wine with purchase prohibited without liquor license, *v. 26, p. 47.*
Guns recovered by police, disposition of stolen registered, *v. 26, p. 188.*
Gun Registration,
 Enforcement, *v. 26, p. 190, p. 191.*
 Revocation, examples of, *v. 26, p. 193.*
 Turn-in and impounding for violation of, *v. 26, p. 185.*
Hearing authority, policeman's performance, *v. 27, p. 33.*
Hearing officers, disciplinary actions, *v. 27, p. 26.*
Identification badge, approval of use by individuals other than members of Department, *v. 26, p. 65.*
Impounded vehicles, release of to lienholders, *v. 27, p. 13.*
Injured persons, liability to hospital for, *v. 25, p. 42.*
I.R.S. demand for certain monies held by the department, *v. 26, p. 17.*
Inspection of license applicant, right to, *v. 25, p. 307.*
Intimidation, *v. 26, p. 18.*
Intoxication and waiver of rights, *v. 26, p. 25.*
Jurisdiction, non-public roadways, *v. 27, p. 11.*
Juvenile prisoner, press photos of, *v. 24, p. 58.*
Laundries, regulation of self-service, *v. 26, p. 214.*
Liability for medical expenses incident to investigation, *v. 27, p. 19.*
Liquor, sale by minors, *v. 26, p. 48.*
Lost property, rights of finder, *v. 24, p. 45; v. 26, p. 72.*
Medical discharge from duty, *v. 27, p. 26.*

POLICE, DEPARTMENT OF—Continued

- Mental treatment, handling of persons in apparent need of, v. 26, p. 21.
- Merchant Vessels, authority to board, v. 26, p. 19.
- Misrepresentation, v. 25, p. 32.
- Non-duty disability benefits for pregnancy, v. 27, p. 13.
- Notice and hearing requirement, towing of abandoned vehicles, v. 27, p. 14.
- Obscenity,
 - Adult cinema clubs, v. 26, p. 46.
 - Nude stage shows, v. 26, p. 46.
- Obscene materials, legality of seizure of, v. 26, p. 22.
- O'Hare Field, jurisdiction at, v. 24, p. 718.
- Out of City Limits, render services, v. 24, p. 55.
- Outside employment, v. 24, p. 57.
- Parked cars of prisoners, liability for, v. 25, p. 482.
- Parking meter funds, percentage, v. 24, p. 625.
- Parking violations, in general, v. 26, p. 402.
- Personnel practice, recommendations for change, v. 26, p. 36.
- Picketing restrictions removal, settlement decree, v. 27, p. 30.
- Police Board,
 - Budget powers, v. 27, p. 268.
 - Judicial review of decisions, v. 26, p. 35.
 - Jurisdiction of, v. 27, p. 28.
 - Legality of hearings prior to determination of criminal issues, v. 25, p. 18.
 - Residency of members, v. 24, p. 53.
- Police Cadets, status of, v. 25, p. 30.
- Police custodian, levy of funds by Internal Revenue Service, v. 25, p. 199.
- Policemen,
 - Administering polygraph test to, v. 25, p. 96.
 - Administering polygraph test to, discharge for refusal, v. 26, p. 34.
 - Auxiliary, indemnification of, v. 26, p. 42.
 - Moonlighting, regulations concerning, v. 26, p. 32.
 - Part-time employment, v. 26, p. 43.
 - Presence of counsel at lineups, v. 26, p. 26.
 - Psychiatric screening of, v. 25, p. 90.
 - Public vehicle license, v. 24, p. 386.
- Police power, extension of, v. 25, p. 277.

POLICE, DEPARTMENT OF—Continued**Press cards,**

Issuance of, v. 26, p. 39.

Issuance and Revocation, v. 27, p. 29.

Private enterprise, entering into, v. 25, p. 33.

Private Parks, police protection of unauthorized parking in, v. 26, p. 22.

Private Property, police protection of, v. 26, p. 22.

Private watch service, guards for filtration plant, v. 25, p. 528.

Private watchmen, v. 25, p. 34.

Probationary employee, v. 25, p. 97.

See also Civil Service Rights of, v. 25, p. 99.

Property Inventory Form, record retention period, v. 26, p. 12.

Proposal to reimburse for wages unpaid during the Depression, v. 27, p. 16.

Proposed office of professional standards, v. 27, p. 15.

Radio, short wave, possession by exconvict, v. 24, p. 15.

Records,

Arrests, effect of making public, v. 25, p. 40.

Criminal identification, destruction or return of, v. 24, p. 37, p. 38.

Destruction or return of, v. 25, p. 28.

Disclosure to Federal Agency—Privacy Act, v. 27, p. 103.

Intelligence, confidential nature, v. 25, p. 36.

Reproduction of, v. 25, p. 29.

Right to search, v. 25, p. 31.

Residence, disclosure of, v. 27, p. 10.

Residence requirements, v. 24, p. 51; v. 26, p. 30.

Resisting arrests, constitutionality of ordinance, v. 26, p. 11.

Retail tobacco dealer, investigation by, v. 25, p. 314.

Revised rules of conduct, when effective, v. 27, p. 13.

Riots, disbursement of demonstration to prevent, v. 26, p. 45.

Retirement age, consolidated park policemen, v. 24, p. 235.

Retirement Board, powers of, v. 25, p. 156.

Rivers and Harbors, jurisdiction over, v. 24, p. 51; v. 25, p. 17.

Search and seizure, justification for, v. 24, p. 46.

Search warrants, procedure in securing and returning, v. 26, p. 23.

POLICE, DEPARTMENT OF—Continued

- Seizure of personal property, custody of, *v. 27, p. 11.*
- Shopping Center parking lots, patrol of, *v. 27, p. 244.*
- Special Policemen,
 - Regulations concerning joining labor unions, *v. 26, p. 44.*
 - Scope of authority, *v. 27, p. 32.*
- Special police regulations, *v. 26, p. 44.*
- Statements by Police officers—Rule 31, *v. 26, p. 32.*
- Subpoena, service of, *v. 25, p. 482.*
- Suspension, effect on claim for wages, *v. 24, p. 101.*
- Tear gas projector, supervision over sale of, *v. 25, p. 224.*
- Tear gas and mace, carrying of by citizens prohibited, *v. 26, p. 201.*
- Teleconomy, authority to contract for, *v. 25, p. 43.*
- Towing rates of vehicles illegally parked on private property, *v. 26, p. 49.*
- Traffic controller—civilians, legality of, *v. 26, p. 39.*
- Truant officers, appointment of, *v. 24, p. 39.*
- Uniforms, authority in Superintendent, *v. 26, p. 30.*
- Unions, right of Policemen to join, *v. 24, p. 25.*
- Unmarked vehicles, conformity to existing law, *v. 26, p. 24.*
- Vehicle impoundment, rules for, *v. 27, p. 21.*
- Vehicles without sirens, *v. 24, p. 640.*
- Veterinary services, responsibility for providing, *v. 26, p. 59.*
- Violations notice in private parking lot, authority to issue, *v. 26, p. 405.*
- Waiver of Counsel at the show up, *v. 26, p. 26.*
- Weapons, prosecutions for carrying unregistered, *v. 26, p. 192.*
- Weapon registration, revocation, *v. 26, p. 193.*
- Weapons retention, civil injury cases, *v. 27, p. 33.*
- Work-release from jail, *v. 26, p. 71.*
- Work-release prisoner, arrest of, *v. 26, p. 27.*

POLICEMEN

- Administering polygraph test to, *v. 25, p. 96.*
- Administering polygraph test to, discharge for refusal, *v. 26, p. 34.*
- Arrest record, effect on employment, *v. 27, p. 27.*
- Auxiliary, indemnification of, *v. 26, p. 42.*
- Conflict of interest, position in city program, *v. 27, p. 76.*

POLICEMEN—Continued

- Conviction of felony, effect on benefits, *v. 27, p. 89.*
- Discharge orders, *v. 27, p. 26.*
- Disciplinary procedures, policemen's rights, *v. 26, p. 30.*
- Disciplinary records, examination after determination of guilt, *v. 27, p. 20.*
- Employment by city, effect of receiving State pension on, *v. 26, p. 120.*
- Felony forfeiture statute, retroactive application to pension, *v. 27, p. 90.*
- Hearing right, performance capability, *v. 27, p. 33.*
- Indemnification of, *v. 25, p. 79.*
- Judicial review of decisions concerning, *v. 26, p. 35.*
- Junior college security officials, powers of, *v. 26, p. 43.*
- Labor union, right to join, *v. 25, p. 43.*
- Liability for minors' medical exam, *v. 27, p. 25.*
- Lineups, right to have counsel at, *v. 26, p. 26.*
- Medical disqualification, *v. 27, p. 26.*
- Mental treatment, liability of officers in handling persons in apparent need of, *v. 26, p. 21.*
- Moonlighting, regulations concerning, *v. 26, p. 32.*
- Negligence liability, *v. 27, p. 285.*
- Part-time employment, *v. 26, p. 43.*
- Promotions ordered, injunction, *v. 27, p. 295.*
- Psychiatric screening of, *v. 25, p. 90.*
- Reinstatement, acquittal from criminal charge, *v. 27, p. 32.*
- Residency Requirements, validity upheld, *v. 26, p. 30.*
- Revised Rules of Conduct, *v. 27, p. 13.*
- Statements by—Rule 31 revised, *v. 26, p. 32.*
- Water filtration plant guards, pension fund rights, *v. 25, p. 172.*

POLICEMEN'S ANNUITY AND BENEFIT FUND

- Age on Application Conclusive, *v. 26, p. 193; v. 25, p. 163.*
- Age requirement, *v. 27, p. 86.*
- Annuitant,
 - Employed by Election Commissioners, *v. 24, p. 189.*
 - Fund employee, *v. 24, p. 175.*
- Child's annuity,
 - Effect of widow surviving, *v. 25, p. 165.*
 - Illegitimate children, *v. 24, p. 173.*
- Conviction of felony, effect on benefits, *v. 27, p. 89.*

POLICEMEN'S ANNUITY AND BENEFIT FUND—Continued

Credit, qualifications for, *v. 25, p. 159.*

Death benefit, participation in after suspension, *v. 25, p. 169.*

Deductions, refund of, *v. 24, p. 177.*

Detectives, amount of contribution from, *v. 24, p. 190.*

Disability benefits,

 Annuitants, list of, public access to, *v. 24, p. 55, p. 186.*

 Credit for, *v. 25, p. 160.*

 Disability defined, *v. 25, p. 171.*

 Effect on annuity, *v. 25, p. 164; v. 26, p. 143.*

 Injured out of City Limits, *v. 24, p. 55.*

 Subsequent entry into public service, effect of, *v. 25, p. 157.*

Discharge, Illegal, effect of, *v. 25, p. 160, p. 168.*

Duty disability pensioner, *v. 25, p. 154.*

 Charges against, *v. 24, p. 112.*

 Effect of Charges, *v. 25, p. 154.*

 Effect of re-entering public service, *v. 25, p. 162.*

 Requirements for discontinuing disability, *v. 25, p. 154.*

Executives, not included in pension fund, *v. 25, p. 158.*

Felony, conviction of, effect on benefits, *v. 24, p. 192.*

Forfeiture for duty related felony, retroactive application to pension, *v. 27, p. 90.*

Health Insurance for widows, payment of, *v. 26, p. 142.*

Medical disqualification from duty, *v. 27, p. 26.*

Merchant Marine, service in, *v. 24, p. 183.*

Pension, effect of re-appointment on, *v. 27, p. 87.*

Pension benefits, termination for felony conviction, *v. 26, p. 145.*

Refund, *v. 25, p. 161.*

Reinstatement after legal discharge, effect on, *v. 24, p. 180.*

Resignation during mental incompetency, *v. 24, p. 174.*

Retirement Board's secretary expenses, *v. 25, p. 160.*

Service credits,

 Assistant States Attorney, *v. 24, p. 181.*

 Leave of absence without pay, *v. 24, p. 187.*

 Military Service, *v. 24, p. 190.*

 Right to appeal constitutionality of, *v. 25, p. 166.*

Surviving spouse death benefits, *v. 27, p. 88.*

Transferred funds, interest upon refund of, *v. 24, p. 177.*

Waiving refund, *v. 25, p. 173.*

POLICEMEN'S ANNUITY AND BENEFIT FUND—Continued

Widow's annuity,

Effect of coerced divorce, *v. 27, p. 86.*

Effect of divorce and reconciliation, *v. 26, p. 144.*

Effect of illegal marriage on, *v. 25, p. 155.*

Marriage, presumption of validity, *v. 24, p. 182.*

Minimum monthly payment, *v. 26, p. 146.*

POLICEMEN'S & FIREMEN'S DEATH BENEFIT FUND

Award amount, applicable law determining, *v. 24, p. 164.*

Procedure for award, *v. 27, p. 85.*

PRESS

See media, *v. 26, p. 39.*

PRISONERS

House of Correction, rights in relation to negotiable instruments, *v. 25, p. 79.*

House of Correction, when received, *v. 25, p. 69.*

Work-release prisoner, arrest of, *v. 26, p. 27.*

PRIVATE PROPERTY

Abutting harbor, port authority jurisdiction over, *v. 25, p. 80.*

Advertising sign projecting into public way, removal of, *v. 26, p. 395.*

Aircraft, title dispute, O'Hare Field, *v. 27, p. 371.*

Annexation, publication of intent required, *v. 26, p. 377.*

Confession of judgment clauses, proposal to restrict, *v. 27, p. 1.*

Confiscated, retention by police, *v. 26, p. 12.*

Condominium conversion moratorium ordinance, restraining order for, *v. 27, p. 204.*

Condominium ordinance, report provision, *v. 27, p. 176, p. 178.*

Conversion of existing premises, private club, *v. 27, p. 198.*

Crosstown Expressway, acquisition of property for, *v. 26, p. 510.*

Demolition when nuisance exists, statutory authority for, *v. 25, p. 332.*

Driveway fees, attaches to property liability of owner for, *v. 26, p. 415.*

PRIVATE PROPERTY—Continued

Easement over Grant Park held by West Side Michigan Avenue property owners, v. 26, p. 311.

Eminent domain,

See that Title, v. 26, p. 99.

Compensation for prior repairs, v. 26, p. 463.

Fence erection, consent of adjacent property owner not required by city ordinance, v. 26, p. 304.

Fire alarm, located on, v. 24, p. 107.

Inspection fees, incident to the property, v. 25, p. 329.

Land Acquisition procedure, v. 26, p. 93.

Liability of City, damages caused to, v. 26, p. 470.

"Lost" and "Mislaidd" property, v. 26, p. 72.

Lost property, rights of finder, v. 24, p. 45.

Municipal Building Bonds, use of to acquire buildings, definition of land, v. 26, p. 453.

Parking Lots—See Parking.

Police Custodian, release to estate, v. 24, p. 41.

Police protection in a private park, v. 26, p. 22.

Political signs on, generally, v. 26, p. 222.

Real Estate,

Panic Peddling, v. 26, p. 218.

Proposal prohibiting misrepresentation of conditions, v. 25, p. 234.

Real Property Transfer Tax, vacation of injunction, v. 27, p. 263.

Receivers for repair, v. 25, p. 326.

Redevelopment Restrictions, v. 26, p. 346.

Repair on driveway, release required, v. 25, p. 421.

Sanitary landfill, permit for, v. 26, p. 421.

Seizure during arrest, regulation of custody, v. 27, p. 11.

Tax on transfer of, brokers license fee as a, v. 26, p. 275.

Transaction tax, liability of beneficial owner, v. 27, p. 260.

Trees, removal of, v. 24, p. 92, p. 293.

Vacant, proposal to require fencing of, v. 24, p. 277.

PRIVATE WATCH SERVICE AND POLICE OFFICERS

Armored vehicles, guards allowed to carry weapons, v. 25, p. 281.

Breach of contract, v. 27, p. 344.

Central district filtration plant, no armed guards for, v. 25, p. 528.

Contract, breach of, v. 27, p. 343.

PRIVATE WATCH SERVICE AND POLICE OFFICERS— Continued

- Detective, license for, *v. 25, p. 318.*
- Regulation of, in general, *v. 25, p. 315.*
- Special Police,
 - Appointment of, *v. 24, p. 39.*
 - Carrying firearms, *v. 24, p. 517.*
 - C. H. A. guards, arrest power of, *v. 26, p. 160.*
 - Firearms, registration of, *v. 26, p. 198.*
 - Joining of labor unions, *v. 26, p. 44.*
 - Junior College security officials, powers of, *v. 26, p. 43.*
 - Liability of City for, *v. 24, p. 643.*
 - One license for various locations, *v. 24, p. 416.*
 - Seaport police, *v. 26, p. 44.*
- Theft losses, liability for, *v. 27, p. 341.*
- Vehicles, regulations governing, *v. 25, p. 283.*
- Watchman, *v. 25, p. 34.*
- Watchmen, allowed to carry weapons, *v. 26, p. 199.*
- Watchmen carrying firearms, regulation of, *v. 26, p. 199.*
- Water filtration plant guards, pension funds rights of, *v. 25, p. 172.*

PUBLIC ACCOMMODATIONS

- Handicapped, facilities for the, *v. 26, p. 304.*
- Federal highway to pass over Illinois Central Railroad Company land, *v. 26, p. 513.*
- Loop mall study report, *v. 26, p. 386.*
- McCormick Place, financing of reconstruction, *v. 26, p. 515.*
- Chicago Urban Transportation District, possible extension of boundary, *v. 26, p. 372.*
- Pay toilet prohibition, *v. 27, p. 170.*
- Poles, removal of, *v. 26, p. 365.*
- Railroads—See that Title.
- Railroads, discontinuance of service, *v. 26, p. 360.*
- Railroads, right-of-way, fencing of, *v. 26, p. 363.*
- Relocating gas main, liability for cost of, *v. 26, p. 373.*
- Relocating utility facilities, liability for expense of, *v. 26, p. 373.*
- Underground placement of telephone and electrical lines, authority of city to require relocation, *v. 26, p. 374.*

PUBLIC VEHICLES

See Motor Vehicles

Ambulance service, similar names, *v. 27, p. 136.*

Assignment of livery licenses, *v. 27, p. 141.*

Chauffeur license,

Authority over processing of, *v. 25, p. 271.*

Recommending revocation of, *v. 25, p. 273.*

Courtesy cars, identification of, *v. 27, p. 247.*

Discretionary powers, statutory grant of, *v. 25, p. 270.*

Emergency Vehicles, ambulances, revocation and suspension of license, *v. 26, p. 246.*

Horse-drawn cabs, no statutory power to regulate, *v. 25, p. 280.*

License, revocation, safety code, *v. 27, p. 142.*

Limousine service, jurisdiction over, *v. 27, p. 130.*

Livery license, assignability prohibited, *v. 25, p. 279.*

Not-for-hire vehicle, fee exemption, *v. 27, p. 135.*

Powers defined, *v. 25, p. 277.*

Police power, extension of, *v. 25, p. 277.*

Private shuttle service, not public conveyance, *v. 27, p. 139.*

Sightseeing vehicles, *v. 27, p. 138.*

Licenses, *v. 24, p. 386.*

Shuttle buses, fare charge, *v. 27, p. 298.*

Taxicabs, use of station wagons, *v. 27, p. 133.*

Taximeter, code requirements for, *v. 27, p. 134.*

Urine drug test, right to request, *v. 27, p. 134.*

PUBLIC WAYS

See also Sidewalks and Streets and Alleys.

Advertisements on structures over, *v. 26, p. 394.*

Advertising projecting into, compensation for removal of, *v. 26, p. 395.*

Advertising solicitation on, *v. 26, p. 204.*

Aircraft, advertising from, *v. 26, p. 393.*

Blocking by railroad trains, *v. 27, p. 234.*

Bus shelters, construction on, *v. 26, p. 383.*

Chicago Skyway,

Claims against, *v. 27, p. 284.*

Rate change, *v. 27, p. 284; v. 27, p. 289.*

C.T.A.,

Damages caused by installation of water main, liability of city for, *v. 26, p. 367.*

PUBLIC WAYS—Continued

- Duty to install and maintain grade crossings, v. 26, p. 368.
- Use by, v. 25, p. 401.
- Chicago Urban Transportation District—See Chicago Transit Authority.
- Construction—Transportation Bond Act, v. 26, p. 460.
- Easement, overpass grant, v. 27, p. 311.
- Extension of right-of-way, v. 25, p. 418.
- Flag poles, installation of, v. 27, p. 222.
- Gas lighted standards, v. 25, p. 520.
- Handbills, distribution on, v. 25, p. 421, p. 422.
- Obstruction of traffic, v. 26, p. 403.
- Paving by City, v. 25, p. 408.
- Peaceful picketing and assembly on, generally, v. 26, p. 387.
- Pedestrian mall, loop, v. 26, p. 386.
- Private advertising, use of, v. 27, p. 243.
- Railroad easement on, v. 25, p. 388.
- Railroad Grade Crossing, city's responsibility for, v. 26, p. 360.
- Religious Solicitation, restrictions on, v. 27, p. 239.
- Relocation of gas facilities, sewer construction, liability for expense, v. 27, p. 373.
- Riverbank dock wall, responsibility for repair, v. 26, p. 97.
- Sale and error, correction of mistake in easement, v. 25, p. 408.
- Snow removal, liability for, v. 27, p. 231.
- Streetcar tracks, removal of, v. 27, p. 223.
- Telephone booths, installation of, v. 27, p. 232.
- Towing of personal automobiles, v. 27, p. 252.
- Traffic controllers—civilian personnel, legality of, v. 26, p. 39.
- Vacation of, v. 25, p. 406.

PUBLIC WORKS

- Chicago River—Zoning Violations, environmental quality of, v. 26, p. 327.
- Easements, reservation of, v. 27, p. 238.
- Electric Utility Poles, removal of, v. 27, p. 230.
- Gas lines, relocation expense, v. 27, p. 215.
- Identification of vehicles used by department, v. 26, p. 98.
- Memorandum of understanding, design phase, v. 27, p. 375.
- Peoples Gas, reporting requirements to city, v. 27, p. 215.

PUBLIC WORKS—Continued

- Right-of-way acquisitions procedure, v. 26, p. 99.
- Riverbank dock wall, responsibility to repair, v. 26, p. 97.
- Subsidewalk space, utility line relocation, v. 27, p. 234.
- Telephone Booths, installation of, v. 27, p. 232.
- Underground conduits, use of, v. 27, p. 220.

PURCHASING ACT

- City Council, power to affect scope of, v. 25, p. 588.
- Public works contracts, regulated by, v. 25, p. 595.
- Urban renewal, regulation of, v. 25, p. 593.
- Abandoned vehicles, authority over, v. 25, p. 464.
- Advertising bids, qualified newspaper, v. 24, p. 687.
- Assigning and subletting provision, deviation waived, v. 26, p. 481.

Bids,

- Addendum, notice of, v. 27, p. 337.
- Authority over, v. 25, p. 548.
- Deviation in procedure, v. 26, p. 474.
- Explanation subsequent to opening, v. 26, p. 475.
- Handling of, v. 25, p. 596.
- Rejection of, v. 25, p. 596; v. 27, p. 330.
- Right to reject all bids, v. 26, p. 491.
- When required, v. 25, p. 590.

Bid deposit, refund of, v. 26, p. 479.**Board of Local Improvements, bid requirements, v. 24, p. 682.****Change orders, when allowed, v. 25, p. 591.****Concession Leases, act applicable to, v. 24, p. 23.****Contract awards, responsibility to bidder, v. 26, p. 473.****Contracts,**

- Gas Company, for service at Western Avenue Pumping Station, legality of, v. 26, p. 495.
- Length of, v. 25, p. 571.
- Registration number required, v. 26, p. 496.
- Retention, paid back to contractor, v. 26, p. 496.

Convict labor, use of, v. 24, p. 713.**Corporate personal property, authority over disposition of, v. 25, p. 590.****"Cost-Plus" contracts, v. 26, p. 483.****Demolition contract,**

- Emergency procedure for, v. 24, p. 716.
- Jurisdiction over, v. 25, p. 593.

PURCHASING ACT—Continued

- Duties defined, *v. 25, p. 590.*
- Emergency contracts, *v. 25, p. 597.*
- Evaluation purpose, purchase for, *v. 24, p. 687.*
- Fair trade laws, effect on, *v. 24, p. 692.*
- General conditions for construction contracts, comments on, *v. 26, p. 484.*
- Hiring powers as effected by ordinance, *v. 25, p. 588.*
- Illinois Municipal Code, amendments to contract provisions of, *v. 26, p. 490.*
- Interpretation of contract, final decision on, *v. 25, p. 561.*
- Lease, authority to, *v. 25, p. 590.*
- Low bid deposits, authority over, *v. 25, p. 470.*
- Monies reserved to insure contract compliance, payment of, *v. 26, p. 482.*
- Municipal Court, Purchasing Act not applicable to, *v. 24, p. 714.*
- Parking meter maintenance contract, *v. 24, p. 717.*
- Police car trade in, adjustment for damage to, *v. 24, p. 716.*
- Rejection, materials or services, *v. 25, p. 594.*
- Retainer fee withholding, final payment to contractor, *v. 26, p. 496.*
- Revocation right, *v. 25, p. 545.*
- Salary of Increase during terms, *v. 24, p. 143.*
- Sale of obsolete equipment, *v. 25, p. 589.*
- Service contracts, vital provisions, *v. 26, p. 497.*
- Statutes, precedence over ordinance, *v. 25, p. 594.*
- Truck hire agreement, I.C.C. certification required, *v. 24, p. 686.*
- West side subway track work, contract for, *v. 24, p. 694.*

R**RAILROADS**

- Advertisements on structures over public ways, *v. 26, p. 394.*
- Barricades, *v. 25, p. 391.*
- Contribution for "Right of Way", *v. 25, p. 388.*
- Crossings, blocking of, *v. 26, p. 358.*
- Crossings,
 - Illinois Commerce Commission's authority over, *v. 25, p. 395; v. 26, p. 358.*
 - Maintenance, of, *v. 26, p. 359.*

RAILROADS—Continued

- Pedestrian gates at, v. 26, p. 359.
- Railroad right-of-way, installation of, v. 27, p. 209.
- Discontinuance of Commuter Service, v. 27, p. 208.
- Discontinuance of service, v. 26, p. 360.
- Stay order, v. 27, p. 211.
- Discontinuance of passenger service and air pollution, v. 26, p. 361.
- Easement encumbered by public way, v. 25, p. 388.
- Fare increase proposal, city participation, v. 27, p. 207.
- Federal highway to pass over Illinois Central Railroad Company land, v. 26, p. 513.
- Fencing right of way, proposal to require, v. 24, p. 525; v. 26, p. 362.
- Freight yard relocation, special zoning use, v. 24, p. 502.
- Grade crossing approaches, responsibility for maintenance, v. 26, p. 359, p. 360.
- Height Clearance Signs,
 - City responsibility, v. 27, p. 212.
 - Posting of, v. 27, p. 210.
 - Underpasses, v. 27, p. 224.
- Illinois Central Railroad,
 - Discontinuance of service, v. 26, p. 358.
 - Fare increase, opposed by city, v. 27, p. 209.
- Illinois Commerce Commission—See that Title.
- Lakefront ordinance, v. 25, p. 506.
- Maintenance agreement, enforceability of, v. 25, p. 394.
- Obstructions on public ways, v. 27, p. 234.
- Payments to city, use of, v. 26, p. 438.
- Piggyback operation, special zoning use of, v. 24, p. 502.
- Randolph Street station, remodeling by Illinois Central, v. 26, p. 361.
- Repair of Crossings, cooperation with city in, v. 27, p. 206.
- Right-of-way, fencing of, v. 26, p. 363.
- Safety devices, installation of, v. 26, p. 364.
- Special police, armed, v. 24, p. 517.
- Streets,
 - Blocking of, v. 27, p. 225.
 - Subleasing, v. 25, p. 393.
- Switch Tracks, v. 24, p. 519; v. 25, p. 389.
- Synchronization of traffic lights with train approach crossing, v. 25, p. 437.
- Tax reserve for refunds, v. 26, p. 447.

RAILROADS—Continued

Track removal, restoration orders, *v. 27, p. 206.*

Utility poles, removal of, *v. 26, p. 365.*

Viaducts and underpasses, maintenance of, regarding Public Utilities Act, *v. 26, p. 364, p. 365.*

Warning requirements at crossings, Railroad and Warehouse Act, *v. 26, p. 363.*

REAL ESTATE

See Property.

RECORDS

City records, microfilming of, *v. 25, p. 61.*

Comprehensive report, city departmental activities, *v. 27, p. 50.*

Confiscate or seize, *v. 25, p. 31.*

Criminal, effect of making public, *v. 25, p. 40.*

Destruction of, *v. 24, p. 407; v. 25, p. 70, p. 72.*

Destruction or return of, *v. 25, p. 28.*

Disclosure of,

By Building Department, *v. 25, p. 78.*

To Federal Agency—Privacy Act, *v. 27, p. 103.*

Expenses for reproduction, Police Department, *v. 27, p. 27.*

Fire Department, destruction of old, *v. 25, p. 81.*

Health, release of records of Board of, *v. 26, p. 59.*

Index of licenses, City clerk, *v. 24, p. 83.*

Inspection of, right of public to, *v. 24, p. 108, p. 450.*

Intelligence, confidential nature of, *v. 25, p. 36.*

Licenses, availability to assessor, *v. 24, p. 86.*

Liquor Control Commissioner, power to subpoena, *v. 25, p. 262.*

Local Records Act,

Applicability to bonds, contracts, payroll records, *v. 27, p. 47.*

Disposal, liquor license applications, *v. 27, p. 48.*

Microfilming City records, *v. 24, p. 81, p. 90, p. 98.*

Patient records, release of, to private researchers, *v. 27, p. 42.*

Reproduction of, *v. 25, p. 29.*

Sanitation inspection records, *v. 27, p. 36.*

Storage in private warehouse, *v. 24, p. 407.*

Storage, Fire Prevention Bureau, *v. 27, p. 48.*

REGIONAL TRANSPORTATION AUTHORITY

Discontinuance of commuter service, *v. 27, p. 208.*

Illinois Central Railroad, fare increase, opposed by city, *v. 27, p. 209.*

Referendum, constitutional challenge, *v. 27, p. 1.*

RESERVE MAINTENANCE ACCOUNT

Use of, *v. 25, p. 466.*

RESTAURANTS

Drive-in, frontage consent proposal, *v. 24, p. 512.*

International airport restaurant, maintenance expense, *v. 25, p. 611.*

Zoning of, *v. 25, p. 380.*

S**SALARIES**

Alderman, assignment to "a not-for-profit organization", *v. 26, p. 1.*

Assignment, wage, *v. 24, p. 152.*

Back salary, as set-off, *v. 25, p. 125.*

Back salary, assignment of claims to, *v. 25, p. 124.*

Computation, *v. 25, p. 123.*

Deceased employee disposition of earned wages, *v. 27, p. 79.*

Holidays, status of Per Diem employee, *v. 24, p. 151.*

Increase,

Aldermen, during term, *v. 24, p. 19.*

During term, *v. 24, p. 143.*

Municipal Court judges, *v. 24, p. 145, p. 149.*

Promotion to higher grade, *v. 24, p. 153.*

Juror, compensation dependent on service, *v. 24, p. 148.*

Method of payment, *v. 25, p. 127.*

Military service, salary scale upon return from, *v. 24, p. 147.*

Overtime compensation,

For youth welfare commission employees, *v. 25, p. 127.*

Legality of, *v. 24, p. 150.*

Right to, *v. 25, p. 128, p. 178.*

SALARIES—Continued**Pension,**

Amount of, *v. 25, p. 134.*

Amount credit for, *v. 24, p. 200.*

Retroactive raises for retired employees, prohibited, *v. 25, p. 131.*

Sick leave payment after death, *v. 24, p. 144.*

Suspension period, claim for, *v. 24, p. 143.*

Vacation pay, *v. 25, p. 128.*

Vacation period, earned prior to death, *v. 24, p. 151.*

Waivers, effect on annuity and benefit status, *v. 24, p. 180.*

Warrants stolen, liability for, *v. 26, p. 448, p. 449.*

SALES

Abuses, regulation of, *v. 26, p. 6.*

Authority over drainlayers fees, *v. 25, p. 84.*

Closing out sale, *v. 24, p. 268, p. 270, p. 289.*

Door to door, regulations of, *v. 24, p. 276.*

Garbage,

Collection of in multiple dwelling, *v. 25, p. 84.*

Ticket for accumulation of, *v. 25, p. 246.*

Goods from distressed source, license for sale of, *v. 24, p. 291.*

Illinois Refuse Disposal Law, city's exemption from, *v. 26, p. 467.*

Liquidation sale, license for, *v. 24, p. 264.*

Removal sale, license for, *v. 24, p. 269.*

Sanitary land fill, permit for, *v. 26, p. 348.*

SCHOOLS

Fire Code, requirements, *v. 27, p. 168.*

Mobile food dispensers, prohibited near, *v. 26, p. 179.*

SEWERS

Authority over fees, *v. 25, p. 74.*

Authorization for increased flow, established O'Hare hook-up, *v. 27, p. 356.*

Chicago Housing Authority, City to provide, *v. 24, p. 240.*

Chicago Housing Authority fee exemption, *v. 25, p. 213.*

Connection, Outside City, *v. 26, p. 671; v. 26, p. 469.*

Construction, authority for, *v. 25, p. 529.*

SEWERS—Continued

- Drainage, surface, toward sewer, v. 24, p. 287.
- Incidental excavation, license not required, v. 26, p. 285.
- Payment for services not used, v. 26, p. 490.
- Underflow plan, v. 25, p. 529.

SIDEWALKS

- Abutting premises, owner of, v. 25, p. 413.
- Airports, status as private or public walks, v. 24, p. 726.
- Basin located in, liability for defect in, v. 24, p. 556.
- Bus shelters, construction on, v. 26, p. 383.
- Canopy, maintenance of, fees, v. 27, p. 229.
- Charitable Organizations, sale of candy, regulations concerning, v. 26, p. 384.
- Crossings, railroad right-of-way, installation, v. 27, p. 209.
- Erection of bleachers for purposes, v. 26, p. 388.
- Maintenance, responsibility for allocating, property owner, responsibility of snow removal, v. 26, p. 390.
- Newspaper sales, regulation of, v. 26, p. 387.
- Personal injury, improper maintenance causing, v. 26, p. 466.
- Picketing restrictions by police, v. 27, p. 30.
- Railroad Crossing, requirements, v. 27, p. 206.
- Railroad track removal, crossing restoration, v. 27, p. 206.
- Repairs,
 - Allocation of funds for, v. 25, p. 415.
 - Procedures to effect, v. 24, p. 555; v. 25, p. 409.
 - Responsibility for, v. 24, p. 562.
- Snow Removal,
 - Abutting owner, v. 24, p. 562, p. 563; v. 26, p. 222.
 - Liability for, v. 27, p. 233.
 - Licensee, v. 24, p. 559.
- Soliciting business from doorway, v. 24, p. 558.
- Subsidewalk space,
 - Bond from Housing Authority, v. 24, p. 238.
 - Maintenance of, v. 27, p. 227.
 - Utility line relocation, v. 27, p. 234.
- Under, damages caused to radiant heating system, liability for, v. 26, p. 389.
- Vaulted, responsibility for maintenance of, v. 26, p. 391.
- Vaulted sidewalks, responsibility for maintenance of, v. 26, p. 392.
- Walkways, elevated, in general, v. 26, p. 390.

SIGNS

See also Billboards and Signs.

Election, billing of, *v. 25, p. 481.*

Near Public ways, restrictions on, *v. 25, p. 358.*

Regulations, application of, *v. 27, p. 241.*

"Sold by", prohibition of, *v. 26, p. 396.*

Towing,

Display of signs, private property, *v. 27, p. 252.*

Parked cars, posting requirements, *v. 27, p. 250.*

Uniform parking signs, *v. 27, p. 248.*

Vertical Height Clearance Signs,

City responsibility, *v. 27, p. 212.*

Railroad underpass, *v. 27, p. 211.*

SPECIAL ASSESSMENTS

Funds, separation of, *v. 24, p. 629.*

Notice, *v. 25, p. 465.*

Parking facilities, financed by, *v. 24, p. 619.*

Sewer permit, issuance required, *v. 24, p. 676.*

SPECIAL POLICEMEN

Defined, *v. 25, p. 315.*

STATE OF ILLINOIS

Acquisition of right-of-way, content of deed for, *v. 24, p. 735.*

Amusement license, state facility exemption, *v. 27, p. 147.*

Application of clean air regulations, *v. 27, p. 118.*

Authority to consolidate park district with city, *v. 27, p. 103.*

Chicago Fair Housing Ordinance, state remedy, *v. 27, p. 105.*

Overhead crossing, use for construction of, *v. 24, p. 624.*

Permit fee exemption, Capital Development Board, *v. 27, p. 176.*

Public places, Civil Rights violation, *v. 27, p. 126.*

Regional Transportation Authority Acts, constitutionality of, *v. 27, p. 1.*

State facilities subject to municipal fire regulations, *v. 27, p. 52.*

Statutes, ordinances conflicting with, *v. 24, p. 70.*

STATE OF ILLINOIS—Continued

Validity of Illinois Pension Code Article Eight, *v. 27, p. 82.*
Zoning, exemption from, *v. 24, p. 488.*

STATUTE OF LIMITATION

Adverse possession, effect of statute, *v. 25, p. 520.*
Claims against City, barring, *v. 25, p. 487.*
Liability of City, effect of, *v. 25, p. 479.*

STREETS & ALLEYS

See also Advertising and Sidewalks.
Acquisition of right-of-way, deed form for, *v. 24, p. 735.*
Advertising on Railroad viaducts, prohibition of, *v. 26, p. 395.*
Air conditioning unit, encroachment over, *v. 24, p. 642.*
Air rights, obligation of highway agencies to pay for use of, *v. 26, p. 375.*
Alley by prescription, effect of, *v. 27, p. 232.*
Alley entrance to parking lot, *v. 24, p. 555.*
Barricades, authority for, *v. 27, p. 231.*
Boulevard underpasses, duty to clean, *v. 24, p. 236.*
Bridges, construction under and over, *v. 26, p. 382.*
Bridge, occupied as public street by City, *v. 25, p. 417.*
Calumet Skyway, jurisdiction of police, *v. 24, p. 603.*
Car-hikers, unlawful, *v. 25, p. 411.*
Columbus Drive Extension, *v. 27, p. 313.*
Construction over Streets, *v. 27, p. 221.*
C.T.A., use by, *v. 25, p. 401.*
Driveway permit requirements, *v. 27, p. 236.*
Dr. Martin Luther King, Jr. Drive, commercial vehicles on, *v. 26, p. 400.*
Easements, public utilities, reservations for, *v. 27, p. 238.*
Elevated walkways, in general, *v. 26, p. 390.*
Erection of bleachers on public sidewalk, *v. 26, p. 388.*
Excessive weight trucks, use by, *v. 25, p. 443.*
Flagpoles within Lake Shore Drive right-of-way, *v. 26, p. 384.*
Flower peddlers, prohibition against, *v. 25, p. 312.*
Garbage containers, location of, *v. 25, p. 246.*
Gas Lines, relocation expenses, *v. 27, p. 215.*
Grading, construction adjacent to tri-level roadway, *v. 27, p. 171.*
Handbills, distribution on, *v. 25, p. 421.*

STREETS AND ALLEYS—Continued

Improvement escrow, permit condition, v. 24, p. 543.

Ingress and egress, v. 25, p. 412.

Lake Park Avenue, ownership of, v. 27, p. 302.

Lake Shore Drive, responsibility for maintenance of fences along, v. 26, p. 156.

Lighting,

Alley, by abutting owner, v. 24, p. 553.

Private street, municipal lighting of, v. 24, p. 551, p. 560.

Lighting on street not dedicated, installation of, v. 26, p. 378.

Litter removal by proprietors, v. 27, p. 229.

Loading platform, use of, v. 27, p. 228.

Loading zone fee, v. 26, p. 385.

Loitering, v. 25, p. 243.

Maintenance funds for, v. 25, p. 475.

Mass Transit Vehicles, separate lane for, v. 24, p. 548.

Mobile food dispensers, v. 25, p. 242.

Motor Fuel Tax Fund, See also State of Illinois.

Name changes, streets, authority for, v. 27, p. 226.

Newspaper sales, regulation of, v. 26, p. 387.

Ninety-fourth Street extension, by-pass, v. 27, p. 310.

Obstruction of traffic, v. 26, p. 403.

Obstructions, removal of, v. 24, p. 553.

"Opened for Public use", v. 24, p. 543.

Parking overnight on residential streets, school buses prohibited, v. 26, p. 398.

Passages, maintenance of, v. 25, p. 208.

Paving,

By Chicago Park District, v. 24, p. 226.

By City, Dedication as prerequisite, v. 25, p. 408.

Use of Wheel Tax Fund for, v. 24, p. 610.

Peddlers, in general, v. 26, p. 389.

Pedestrian mall, loop, v. 26, p. 386.

Picketing on, v. 26, p. 31; v. 26, p. 219.

Public street, leasing of, v. 25, p. 414.

Public utility, repair and maintenance, liability, v. 27, p. 213.

Railroad crossing,

Extended blocking of, v. 26, p. 358.

Repair of, v. 27, p. 206.

Railroad easement on, v. 25, p. 388.

STREETS AND ALLEYS—Continued

- Railroad height clearance signs, posting of, *v. 27, p. 210.*
- Religious solicitation, restrictions on, *v. 27, p. 239.*
- Repairs to expressway before location is accepted, responsibility for, *v. 26, p. 512.*
- Right of way, procedure for extension of, *v. 25, p. 418.*
- Right turn permitted on red after stop, in general, *v. 26, p. 407.*
- Sale and error, *v. 25, p. 408.*
- Service streets, See also Parking, *v. 25, p. 440.*
- Signs, bus stop, posting required, *v. 26, p. 398.*
- Signs, removal of, *v. 25, p. 420.*
- Signs on lamp posts, *v. 24, p. 569.*
- Signs on poles, changing of street names, *v. 26, p. 467.*
- Skyway lease for parking on, prohibited, *v. 26, p. 387.*
- Skyway rate increase, *v. 27, p. 289.*
- Snow and ice, accumulation of, *v. 26, p. 391.*
- Soliciting on, *v. 25, p. 236.*
- Southwest Highway, acquisition of easement for, *v. 25, p. 521.*
- Speed limits,
 - Jurisdiction to decrease, *v. 26, p. 408.*
 - Procedure in setting, *v. 24, p. 603.*
 - Progressive signal speed, *v. 26, p. 409.*
 - Within perimeter of O'Hare Airport, *v. 26, p. 396.*
- Street blockings, railroad trains, *v. 27, p. 225.*
- Streetcar tracks, removal of, *v. 27, p. 223.*
- Street cleaning, posting of permanent signs, *v. 26, p. 410.*
- Subsurface space, responsibility for, *v. 24, p. 545.*
- Tow trucks, solicitation on public way by, *v. 24, p. 557.*
- Traffic control signs, removal of, *v. 27, p. 237.*
- Truck regulation, *v. 27, p. 238.*
- Urban Transportation District Act, constitutionality of, *v. 26, p. 370.*
- Vacation,
 - Compensation for, *v. 26, p. 381.*
 - Factors considered by City Council, *v. 25, p. 507.*
- Vacation of,
 - Economic Disclosure Statement, *v. 27, p. 219.*
 - For medical center, waiver of compensation, *v. 26, p. 381.*
 - For public bodies, *v. 27, p. 218.*
 - Streets, *v. 25, p. 406.*

STREETS AND ALLEYS—Continued

Vertical height clearance signs, *v. 27, p. 222.*

Posting of, *v. 27, p. 224.*

Widening of, *v. 24, p. 546.*

STREETS AND SANITATION, DEPARTMENT OF

Aerial towers, posting of warning signs, *v. 27, p. 115.*

Commissioner, authority over garbage containers, *v. 25, p. 246.*

Construction—Transportation Bond Act, *v. 26, p. 460.*

Debris removal, street parkways, *v. 27, p. 229.*

Excessive vehicle weight, authority to issue permits for, *v. 25, p. 306.*

Flagpoles within Lake Shore Drive, right-of-way, *v. 26, p. 384.*

Incinerators, disposal of, *v. 27, p. 305.*

Lighting on street not dedicated, installation of, *v. 26, p. 378.*

Main, crossing tracks, fee liability, *v. 27, p. 227.*

Mining of Sand, *v. 26, p. 330.*

Parking lots, set back requirement, *v. 26, p. 405.*

Pedestrian mall, loop, *v. 26, p. 386.*

Railroad crossings, installation of flashing signal lights at, *v. 26, p. 364.*

Railroads, maintenance of underpasses, *v. 26, p. 364.*

Refuse disposal, operation limitations exemption, *v. 27, p. 116.*

Signs, removal of, *v. 25, p. 420.*

Sludge contracts, expiration of, *v. 27, p. 345.*

Street barricades, authority for, *v. 27, p. 231.*

Traffic control signs, removal of, *v. 27, p. 237.*

Utility poles—railroad, removal of, *v. 26, p. 365.*

Vaulted sidewalks, responsibility for maintenance of, *v. 26, p. 391, p. 392.*

Water main under railroad tracks, installation of, *v. 26, p. 366.*

Work progress administration improvements, reconstruction of, *v. 27, p. 236.*

T**TANKS**

See Flammable Liquids and Materials.

TAVERNS

See Liquor and Liquor Dealers.

TAXES

Amusement device tax, license revocation, *v. 27, p. 149.*

Amusement Tax, exemption dependent on method used to raise funds, *v. 25, p. 301.*

Amusement Tax Ordinance, See that Title.

Auctioneers license, exemption from, *v. 27, p. 154.*

Banks, power of City to license and tax, *v. 24, p. 410.*

Bids, inclusion in, *v. 25, p. 560.*

Chicago Employer's Expense Tax, liability of government units, *v. 27, p. 265.*

Cigarette Tax and home rule, *v. 26, p. 414.*

Collection of city and county, regulations concerning, *v. 26, p. 415.*

Community conservation property, *v. 24, p. 680.*

Employer's Expense Tax,

Applicability to city contractor's employees, *v. 27, p. 250.*

Federal employee exemption, *v. 27, p. 257.*

Grounds for refund, *v. 27, p. 262.*

Priority in bankruptcy proceedings, *v. 27, p. 257.*

Validity of, *v. 27, p. 255.*

Exemption, municipal, dependent on use, *v. 25, p. 462.*

Federal Excise Tax, *v. 25, p. 453.*

Inapplicable to city purchase, *v. 25, p. 560.*

Federal exemption for benefits by charitable institution, *v. 25, p. 294.*

Foreign fire insurance Tax, *v. 25, p. 462.*

Funds paid under protest, investment and right to interest, *v. 25, p. 463.*

Hotel occupancy tax, *v. 26, p. 415.*

Illinois Retailer's Occupation Tax,

Exemption, not for profit organization, *v. 27, p. 264.*

Exemption, sale to governmental body, *v. 27, p. 264.*

Income Tax, State, on Illinois wages, *v. 25, p. 454.*

Leasehold interests assessments, *v. 27, p. 266.*

Leasing Occupation Tax Act, liability of city for, *v. 26, p. 416.*

Levy, upon municipal corporation, federal right to, *v. 25, p. 201.*

TAXES—Continued

Message tax, imposed on telephone company, *v. 27, p. 254.*

Motor Fuel Tax, *v. 25, p. 449, p. 475.*

Motor Fuel Tax Fund, buying of tax anticipation warrants,
v. 26, p. 441.

Municipal Department, payment by, *v. 26, p. 416.*

Municipal Utilities Tax,

American District Telegraph Company, *v. 24, p. 260.*

Church, Claim for exemption from, *v. 24, p. 615.*

Exemptions from, *v. 26, p. 418.*

Exemption, Claim for,

Construction material transferred to City, *v. 25, p. 447.*

Federal Reserve Bank, *v. 24, p. 610.*

National banks, *v. 24, p. 611.*

Gross Receipts, Deductions from,

Commonwealth Edison Company, *v. 24, p. 612.*

Illinois Bell Telephone Company, *v. 24, p. 612.*

Peoples Gas Company, *v. 24, p. 616.*

Western Union Telegraph, *v. 24, p. 617.*

Parking Tax,

See Parking, *v. 26, p. 406.*

Application to rent free spaces, *v. 26, p. 417.*

Liability of city for, *v. 26, p. 416.*

Property Tax,

On Chicago Public Library, *v. 25, p. 530.*

Special benefits for senior citizens, *v. 26, p. 420.*

Railroads, tax refund reserve, *v. 26, p. 447.*

Real estate, driveway fees, attaches to property, liability of
owner for, *v. 26, p. 415.*

Real Property Transfer Tax, vacation of injunction, *v. 27, p. 263.*

Refund reserve, interest on, *v. 24, p. 263.*

Retailers' or Use Tax, *v. 25, p. 453.*

Retailers' Occupation and Use Tax required in contract
specification, *v. 25, p. 537.*

Retailers' Occupation Tax,

Exemption from, *v. 24, p. 609; v. 25, p. 452.*

Exemption, fluorine, *v. 25, p. 451.*

Liability of city for, *v. 26, p. 419.*

Retailers' Occupation Tax on sale of obsolete equipment, *v. 25, p. 589.*

TAXES—Continued**Sales Tax,**

Bids exempt from, *v. 25, p. 533.*

Evasion, effect on applicant, for liquor license, *v. 25, p. 268.*

Purchase defined, *v. 25, p. 450.*

Sales of salvage, liability for, *v. 26, p. 418.*

Segregation of tax funds, pursuant to court order, *v. 27, p. 264.*

Senior citizens, special tax benefits, *v. 26, p. 420.*

Tariff rates—daily truck hire, *v. 26, p. 411.*

Tax anticipation notes, ordinance amendment, *v. 27, p. 254.*

Tax anticipation warrants, sale to City's Motor Fuel Tax Fund, *v. 26, p. 441.*

Tax Lien claim, bankrupt contractors, *v. 27, p. 270.*

Tax levy release, lien claims, *v. 27, p. 267.*

Tobacco products tax,

Constitutionality of, *v. 26, p. 421.*

Exemption of City from, *v. 26, p. 421.*

Transaction tax, liability of beneficial owner, *v. 27, p. 260.*

Unpaid, mistake in statement of notice, *v. 27, p. 256.*

Use Tax,

City sales exempt, *v. 25, p. 451.*

In lieu of Retailers' Occupation Tax, *v. 25, p. 451.*

Removal of City's liability to pay, *v. 25, p. 539.*

Utility Tax,

No authorized exemptions, *v. 27, p. 256.*

On deductions from gross revenue, *v. 25, p. 460.*

On telephone company, *v. 25, p. 456.*

Vehicle Tax, *v. 25, p. 475.*

Wheel Tax license, fees, exemptions for federal employees, *v. 25, p. 202.*

Wheel Tax Ordinance,

Nature and scope, *v. 26, p. 426.*

Residence, *v. 27, p. 259.*

TAXICABS

See Public Vehicles and Motor Vehicles.

THEATRES

Fire Curtain blocked by screen outdoor screen, Permit for widening, v. 24, p. 443.

Licenses, Town Underground Theatre, v. 26, p. 272.

TOBACCO DEALERS

See Cigarettes and Cigarette Dealers.

TRAFFIC

Airport enforcement procedures, regulation, v. 27, p. 246.

Auto Start, illegality of, v. 25, p. 445.

Bus stop signs, posting required, v. 26, p. 398.

City vehicles, v. 25, p. 436.

Civil personnel employed as controllers, legality of, v. 26, p. 39.

Deliveries, in No Parking Zone, v. 25, p. 433.

Excessive vehicle weight, permit for, v. 25, p. 306.

Intersection, defined, v. 25, p. 441.

Liability caused by, v. 25, p. 489.

Lights, synchronized with train approach signal, v. 25, p. 437.

Mass transit vehicles, separate lane for, v. 24, p. 548.

"Meter-Maid" program, v. 25, p. 444.

Obstruction of traffic, v. 26, p. 403.

Ordinance, in conflicting with state law, v. 25, p. 438.

Parking violations, in general, v. 26, p. 402.

Police jurisdiction, non-public roadways, v. 27, p. 11.

Railroad crossings, extended blocking of, v. 26, p. 358.

Railroads, crossing maintenance of, v. 26, p. 359.

Railroad grade crossings, pedestrian gates at, v. 26, p. 359.

Radar warning signs, v. 24, p. 594.

Regional transport, authority to receive funds, v. 27, p. 5.

Regulations,

Foreign consulate, subject to, v. 24, p. 580, p. 596.

On College property, legality of, v. 26, p. 400.

Type of vehicles, v. 26, p. 400.

"U-Turns" at intersections, v. 24, p. 605.

"Resident Parking Only", justification for, v. 27, p. 250.

Right turn permitted on red after stop, in general, v. 26, p. 407.

School zones,

Parking, v. 25, p. 441.

Twenty miles per hour, designation of, v. 24, p. 606.

TRAFFIC—Continued

Speed limits,

Discretionary differences valid, v. 26, p. 409.

Jurisdiction to decrease, v. 26, p. 408.

Modification of prima facie limits, v. 24, p. 572.

Procedure in setting, v. 24, p. 603; v. 25, p. 430.

Property south in perimeter of Chicago-O'Hare International Airport, v. 26, p. 396.

Statutory authority for regulation, v. 25, p. 431.

Street cleaning, posting of permanent signs, v. 26, p. 410.

Toll plaza light signals, v. 24, p. 603.

Tow trucks, regulations governing, v. 25, p. 439.

Trucks, as cargo—carrying of, v. 26, p. 392.

Trucks,

Making deliveries, v. 25, p. 433.

Regulation of weight, v. 25, p. 443.

Using streets, power to restrict, v. 24, p. 589.

U-Turns, v. 25, p. 438.

TREES

Dutch Elm Disease, nuisance, v. 24, p. 293.

Private property, removal of, v. 24, p. 92.

Trimmer, liability for injury to applicant, v. 24, p. 645.

TRUCKS

See Motor Vehicles.

TRUST FUNDS

Administration of trust fund, v. 26, p. 68.

TUNNELS

Chicago Tunnel, ownership of, v. 24, p. 665.

West Thomas Street, maintenance of, v. 24, p. 552.

U**UNDERTAKERS & UNDERTAKING ESTABLISHMENTS**

Corporate officer, unlicensed, name in advertising, v. 24, p. 380.

Funeral director, not an embalmer, v. 24, p. 383.

Funeral escort service, v. 24, p. 40, p. 380.

UNDERTAKERS AND UNDERTAKING ESTABLISHMENTS—Continued

- License revocation,
 - Corporate identity, v. 24, p. 382.
 - Failure to satisfy a judgment, v. 26, p. 297.
- “No License Certificate”, renewal of, v. 24, p. 381.

UNITED STATES

- Buildings, City jurisdiction over, v. 25, p. 202.
- City Employees, paid by federal funds, v. 25, p. 119.
- Fair trade laws, effect on City contracts, v. 24, p. 692.
- Federal Aviation Agency, v. 25, p. 599.
- F.H.A. Contract with City for loans and grants under, v. 24, p. 213.
- Internal Revenue levy on funds held by police custodian, v. 25, p. 199.
- Landing fee, federal exemption from, v. 25, p. 603.
- Levy upon municipal corporation, federal right to, v. 25, p. 201.
- Post office, immunity from Municipal Code regulations, v. 26, p. 153.
- Wheel Tax license fees, exemption for Federal employees, v. 25, p. 202.
- Zoning exemption, v. 25, p. 366.
- Zoning Ordinance, yields to needs of, v. 24, p. 481, p. 490.

URBAN RENEWAL

- See also Conservation and Redevelopment.
- Appraisals, subject to discovery, “unit rule” valuation, v. 26, p. 159.
- Chicago Land Clearance Commission, v. 25, p. 64.
- Community Conservation Board, procedure for acquisition, v. 25, p. 68.
- Community Improvement Bond Fund, use of, v. 26, p. 428.
- Compensation for fixtures, v. 26, p. 463.
- Compliance of redevelopment plan to HUD standards, v. 26, p. 175.
- Conflict of Interest—Employee’s acquisition of property, v. 26, p. 300.
- Conservation Community Councils, number of members to constitute quorum, v. 26, p. 161.
- Covenants running with land, requirements for, v. 26, p. 162.

URBAN RENEWAL—Continued

Demolition of dangerous and unsafe buildings, v. 26, p. 302.

Demolition, party wall obligation of city regarding adjoining property, v. 26, p. 379.

Disclosure to home buyers and sellers, rehabilitation loans, v. 27, p. 107.

Funds,

Federal loans, opinion and certificate, v. 26, p. 154.

Relocation of, v. 25, p. 217.

Grant, What constitutes action sufficient to earn, v. 26, p. 163.

Hauling of debris, v. 26, p. 277.

Housing rehabilitation, financing of HUD Grant requirements, v. 27, p. 101.

Land Clearance Commission, v. 25, p. 212.

Loan application—conflict of interest, v. 26, p. 166.

Model Cities,

Contracting procedure, v. 26, p. 167.

Subcontractor claim settlement, v. 27, p. 348.

Mortgage Note, authority of City to execute, v. 26, p. 167.

Neighborhood Development Program, authority to proceed in, v. 26, p. 169.

Neighborhood Facilities Grant, authority to receive, v. 26, p. 155.

Private redevelopment—capital and financing requirement, v. 26, p. 177.

Purchasing Act, subject to, v. 25, p. 593.

Redevelopment of properties, sale for, v. 26, p. 346.

Rescission of resolution, v. 25, p. 213.

Refund from City for mortgage prepayment penalty, v. 26, p. 168.

Rehabilitation financing, F.H.A., procedure for, v. 25, p. 189.

Relocation of funds, v. 25, p. 217.

Relocation of utility distribution lines, inherent police power of municipality, v. 26, p. 374.

Relocation payments for replacement housing, v. 26, p. 160.

Rental units,

Contracts for, v. 27, p. 351.

Disadvantaged families, v. 27, p. 346.

Rodent Control Service, v. 26, p. 315.

URBAN RENEWAL—Continued

Urban Renewal Consolidation Act, contracts subject to, *v. 26, p. 483.*

Transfer of HUD property, imposition of conditions, *v. 27, p. 106.*

Vacation, See that Title.

USE TAX

Purchaser, imposed on, *v. 25, p. 450.*

Water service fees, exemption cancellation, *v. 27, p. 321.*

V**VACATION OF STREETS AND ALLEYS**

Acceptance of Compensation, effect of, *v. 27, p. 5.*

Compensation for, *v. 24, p. 542; v. 26, p. 381.*

Compensation for, public bodies, *v. 27, p. 218.*

Economic disclosure statements, *v. 27, p. 219.*

Easements, public utilities, reservation for, *v. 27, p. 238.*

Generally, *v. 24, p. 54.*

“Opened for Public Use”, meaning of, *v. 24, p. 543.*

Ordinance introduction, legislative support, *v. 27, p. 217.*

Refusal to record vacation of an alley, *v. 26, p. 382.*

Waiver of payment of compensation, *v. 26, p. 381.*

VEHICLE LICENSE

See Motor Vehicles.

VENDING MACHINES

Cigarettes, See that Title.

One item, legality and licensing, *v. 24, p. 368.*

VENDORS

Sidewalk food vendors, prohibited, *v. 25, p. 221.*

VENTILATION

Mechanical equipment for, inspection of, *v. 24, p. 435.*

VOTING MACHINES

Insurance coverage for, *v. 24, p. 628.*

VESSELS

Chicago Police, authority to board, v. 26, p. 19.

VETERANS

Civil Service Preference, see Civil Service.

W**WATER**

Air conditioning equipment, conservation of water in, v. 24, p. 677.

Annexed areas, service to, v. 27, p. 319.

Charges,

 Cancellation of Exemption, v. 27, p. 321.

 Collections, responsibility for, v. 25, p. 527.

 Delinquent, generally, v. 24, p. 607.

 Collection from new owner, v. 26, p. 449.

 Enforcement action available, v. 25, p. 446.

 Exemptions for religious and educational institutions, v. 24, p. 634; v. 25, p. 468, v. 27, p. 322.

 Property transfer, effect on liability, v. 27, p. 318.

 Surcharges, v. 27, p. 318.

 Unpaid, liability of new owner, v. 24, p. 679.

Filtration plant,

 Guards for, v. 25, p. 528.

 Guards, pension fund right of, v. 25, p. 172.

 Ownership of, v. 27, p. 319.

Fluoridation,

 Cost charged to water fund, v. 24, p. 624.

 Referendum on, v. 24, p. 3, p. 5.

Fluorine, purchase of, v. 25, p. 451.

Funds,

 Property, lease for park use, v. 24, p. 670.

 Property, use for taxicab testing facility, legality of, v. 26, p. 425.

 Use tax paid not reimbursed, v. 25, p. 451.

Mains,

 Crossing tracks, liability for fees and reimbursement, v. 27, p. 227.

 Liability of city for damages caused by, v. 26, p. 470, v. 27, p. 288.

WATER—Continued

- Under railroad tracks, installation of, v. 26, p. 366.
- Vacated streets, compensation for, v. 24, p. 542.
- Plumbing repairs, permit required, v. 24, p. 424.
- Relocation of gas facilities, sewer construction, financial liability, v. 27, p. 373.
- Reservoir not permitted use, airport land sold to state, v. 27, p. 354.
- Supply,
 - Beyond city limits, transfer of, permit for, v. 24, p. 673; v. 26, p. 469.
 - Non-residents, furnishing to, v. 24, p. 678.
- Suspense Accounts,
 - Collectibility of, v. 25, p. 526.
 - Uncollectibility of, v. 25, p. 469; v. 26, p. 441, p. 471.
 - Uncollectibility of, statute of limitations, v. 27, p. 323.
- Swimming pools, private—regulation of, v. 26, p. 223.
- Utility Taxes, state and municipal, no exemptions, v. 27, p. 256.

WATER DEPARTMENT

- Central Filtration Plant, ownership of, v. 27, p. 319.
- Home rule limitations on indebtedness, v. 27, p. 319.
- Properties held by, v. 25, p. 472.

WATERWAYS

- Boat Tours, regulation of, v. 26, p. 274.
- Chicago River, River bank dock wall, responsibility for repair, v. 26, p. 97.
- Diversion of, limiting sale to suburban municipalities, legality of, v. 26, p. 469.
- Dock facilities, liability for repair, v. 27, p. 311.
- Duck hunting, on Lake Michigan, v. 26, p. 213.
- Harbor Pollution Control Ordinance, v. 26, p. 78.
 - Enforcement of, v. 26, p. 77.
- Lease of docking facilities, v. 25, p. 67.
- Liquor license for ship at Navy Pier, v. 24, p. 344.
- Police jurisdiction over, v. 24, p. 51; v. 25, p. 17.
- Pollution—Phosphate ordinance, v. 26, p. 79.

WEAPONS**Air rifles,**

Regulations governing, *v. 25, p. 227.*

Sale of, *v. 26, p. 201.*

Ammunition, storage of small arms, *v. 26, p. 188.*

"Big-Bang", *v. 25, p. 239.*

Blank Pistols, *v. 25, p. 251.*

Carrying by correctional officers, *v. 26, p. 71.*

Concealed, carrying of, *v. 25, p. 221.*

Demonstration of bullet resistant plastics, *v. 27, p. 110.*

Detectives, carrying, *v. 25, p. 225.*

Dog repellent chemicals, *v. 27, p. 109.*

"Escort", tear gas projector, *v. 25, p. 224.*

Firearms carried in parades, ordinance clarified, *v. 26, p. 185.*

Firearms,

Registration by special police, *v. 26, p. 198.*

Regulations regarding non-citizens, *v. 26, p. 197.*

Sale and repair, regulation of, *v. 26, p. 195.*

Gun registration,

Enforcement, *v. 26, p. 190, 191.*

Example of revocation grounds, *v. 26, p. 193.*

Necessity of Social Security number, *v. 26, p. 184.*

Turn-in and impounding for violations, *v. 26, p. 185.*

Guns, Lincoln Park Gun Club, *v. 26, p. 196.*

Handguns,

Permit required to purchase, *v. 26, p. 184.*

Regulations applicable to, *v. 25, p. 229.*

Mace and tear gas, citizens prohibited, *v. 26, p. 201.*

Plastic-type pellet guns, *v. 25, p. 230.*

Police retention, civilian injury cases, *v. 27, p. 33.*

Private officers, unlawful use of weapons by, *v. 26, p. 198.*

Registration of firearms, mail order sales, *v. 26, p. 186.*

Registration,

Pawnbroker's responsibility, *v. 26, p. 197.*

Revocation, *v. 26, p. 193.*

Registration revocation, narcotics use, *v. 26, p. 200.*

Registration of Sample firearms, *v. 26, p. 194.*

Registration violations, evidence necessary to convict, *v. 26, p. 191.*

Regulations regarding minors, *v. 26, p. 197.*

Sales of, Regulations for, *v. 24, p. 251; v. 25, pp. 221, 224; v. 26, p. 184.*

WEAPONS—Continued

- Self-defense spray, use prohibited, v. 26, p. 202.
- Sling shots and cross bows, sale prohibited, v. 26, p. 202.
- Stolen registered guns recovered by police, disposition of, v. 26, p. 188.
- Special policemen, carrying, v. 25, p. 225.
- Tear gas pens, use prohibited, v. 26, p. 202.
- Toy gun, not a "Firearm", v. 24, p. 252.
- Transportation in vehicles, regulations, v. 26, p. 189.
- Unlawful use of, v. 25, p. 221.
- Unregistered weapons, prosecutions for carrying, v. 26, p. 192.
- Watchmen carrying, regulation of, v. 26, p. 199.
- Watchmen and special guards, possession by, v. 26, p. 198.

WEIGHTS AND MEASURES

- Enforcement weights and measures act by city sealer, v. 26, p. 70.
- Scales measuring hundredths of a pound, legality of, v. 24, p. 248, p. 249.

WHEEL TAX

- See Motor Vehicles.

WORDS AND PHRASES

- Barratry, v. 24, p. 50.
- Church, definition of, v. 24, p. 298.
- "Opened for Public Use", v. 24, p. 543.
- Salary, v. 24, p. 200.

Z**ZONING**

- Accessory use, v. 25, p. 355.
- Administrative decisions, judicial review of, v. 26, p. 321.
- Administrative discretion, application for R-4 building permit, v. 27, p. 203.
- Advertising signs,
 - Amendment to ordinance, v. 25, p. 426.
 - Defined, v. 25, p. 381.
- Air Conditioner, requirements for, v. 25, p. 338.

ZONING—Continued**Airports,**

Construction heights, regulation of, v. 26, p. 352-354.

Height restriction, city air rights, v. 27, p. 197.

Land use restriction zone, v. 27, p. 196.

Navigation facility,

Exemption from, v. 24, p. 481.

Procedure for, v. 24, p. 722.

Planned development, v. 25, p. 611.

Amendment,

Building permit, status of, v. 24, p. 484.

Definition of "massage establishment", v. 27, p. 185.

Effect of,

An application for zoning approval, v. 27, p. 194.

Permit for remodeling non-conforming structure, v. 27, p. 184.

Planning Department, duties regarding, v. 24, p. 483.

Proposed, effect on permit, v. 24, p. 491.

Unconstitutional, v. 24, p. 368.

Annexation,

Contiguity by connecting highway, v. 25, p. 605.

Procedures, v. 24, p. 492.

Apartment garage, permit for gasoline, v. 24, p. 485.

Area calculations, alley by prescription, v. 27, p. 232.

Basement, use as dwelling unit, v. 27, p. 200.

Board of Appeals,

Authority to grant variations, v. 24, p. 372.

Equities, considerations of, v. 25, p. 377.

Judicial Review of Decisions, v. 26, p. 321.

Jurisdiction, v. 25, p. 365; v. 26, p. 324.

Jurisdiction over sanitary land fill application, v. 26, p. 325.

Powers to change, v. 26, p. 360.

Procedure change, v. 24, p. 478; v. 26, p. 325.

Procedure to consider application, v. 26, p. 319.

Rehearing, v. 25, p. 376.

Building permit revocation for non-compliance with parking regulation, v. 26, p. 314.

Certification based on continuing non-conforming use, v. 27, p. 199.

Chicago Port Authority, power over, v. 24, p. 475.

Chicago River—Zoning violations, environmental quality of, v. 26, p. 327.

ZONING—Continued

Church, defined for zoning purposes, *v. 25, p. 363.*

Church in a business district, *v. 25, p. 360.*

Church in a restricted service district, requirement of application for, *v. 26, p. 327.*

City Council,

Authority to make changes, *v. 25, p. 6.*

Plat approval, zoning, effect on, *v. 27, p. 189.*

Compatibility with district, *v. 25, p. 367.*

Comprehensive Zoning Ordinance, effective date of, *v. 24, p. 481.*

Convalescent homes, proposal to reclassify, *v. 24, p. 507.*

Conversion of existing premises to private club, *v. 27, p. 198.*

Court order permission to construct dwelling, *v. 27, p. 194.*

Deconversion of buildings under renewal plan, *v. 24, p. 466.*

Decree, Effect of, *v. 25, p. 373.*

Doctor's office in single family residence, *v. 24, p. 476.*

Essential governmental function, exemption for, *v. 25, p. 356.*

Exemption,

Board of Education, *v. 25, p. 383.*

Chicago Public Library, *v. 24, p. 487.*

City of Chicago, *v. 24, p. 489.*

Federal Government, *v. 24, p. 490; v. 25, p. 371.*

Illinois, State of, *v. 24, p. 488.*

Municipal, State of, *v. 24, p. 488.*

Schools, *v. 24, p. 489.*

Exhaustion of local remedies, *v. 26, p. 323.*

Fire station located in two districts, requirements for construction, *v. 26, p. 329.*

Firing range, legality of, *v. 26, p. 46.*

Floor area ratio, joined structures, *v. 27, p. 188.*

"For Sale" sign ban, residential areas, *v. 27, p. 242.*

Freight yard relocation agreement, *v. 24, p. 502.*

Frontage consents, See that Title.

General residence district,

Area requirement, *v. 27, p. 200.*

Two-dwelling unit construction, *v. 27, p. 202.*

Geographic extent of, *v. 24, p. 477.*

Half Way Home, in general, *v. 26, p. 335.*

ZONING—Continued

Height restriction, near Airport, *v. 25, p. 384.*

Helipoint, Status of, *v. 24, p. 720.*

House of Worship, filling station near, *v. 25, p. 363.*

International Amphitheatre, addition to, *v. 24, p. 470.*

Junk yard, Storage of steel ingredients, *v. 24, p. 496.*

Landfill sites, location of, *v. 27, p. 203.*

Lawful non-conforming use, plats of resubdivision, *v. 27, p. 190.*

Liquor establishment in residential district, *v. 26, p. 356.*

Liquor in General Retail District, sale of, *v. 26, p. 318.*

Lots,

Defined, *v. 25, p. 369.*

Division of, *v. 25, p. 376.*

Records, restrict construction, *v. 24, p. 495.*

Requirements, in relation to stores, *v. 25, p. 330.*

25 foot, homes on, *v. 24, p. 469.*

Unrecorded, construction on, *v. 24, p. 482.*

Mining of sand, *v. 26, p. 330.*

Motel, rear yard requirement, *v. 24, p. 505.*

Motor freight terminal, *v. 25, p. 339.*

Where allowed, *v. 25, p. 345.*

Motor vehicle salesroom, regulation of, *v. 26, p. 331.*

Multipurpose Company, applicability of ordinance on, *v. 26, p. 331.*

Non-conforming use,

Continuation of, *v. 25, p. 379, p. 380.*

Expansion of, *v. 27, p. 192.*

New owner's right to continue, *v. 26, p. 333.*

Substitution, *v. 25, p. 359.*

Notice of new construction, adjacent owners, *v. 27, p. 174.*

Nursing home, issuance of permit, *v. 26, p. 333.*

Nut-packing house in residential district, frontage consent applicable to, *v. 25, p. 385.*

O'Hare zoning regulations, violation, proposed arena construction, *v. 27, p. 355.*

Oil storage tanks, *v. 25, p. 329.*

Ordinance,

Cumulative nature of, *v. 25, p. 376.*

Effect on building restriction, *v. 25, p. 364.*

Floor area ratio requirements, guidelines, *v. 27, p. 180.*

Intent and purpose of, *v. 25, p. 382.*

Runway approach zone, height restriction, *v. 27, p.*

ZONING—Continued**Parking facility,**

As public use, *v. 25, p. 432.*

As "Special Use", *v. 25, p. 365.*

Parking lots and garages, as "Special Use", *v. 25, p. 325.*

Parking lot,

Background use as, *v. 24, p. 494.*

Extension grants, authority to, *v. 27, p. 244.*

Used by another party, *v. 25, p. 373.*

Parking requirements,

Exemption from by church, *v. 27, p. 198.*

Off street, *v. 26, p. 339.*

Parking structure, exceeding rear yard height regulation,
v. 26, p. 339.

Permit for greenhouse ordinance non-applicable, *v. 27, p. 180.*

Permitted use, R-4 classification, *v. 27, p. 201.*

Planned development, *v. 25, p. 370.*

Sale of open space to Park District, *v. 26, p. 345.*

Single control requirement, *v. 26, p. 344.*

Planned development business, change in use, *v. 26, p. 342.*

Property use termination, administrator's authority, *v. 27, p. 193.*

Public open space, defined, *v. 25, p. 353.*

Public use of private driveway, *v. 25, p. 360.*

Ready-mix concrete bin, limitations in, *v. 24, p. 472.*

Redevelopment of properties, restrictions, *v. 26, p. 346.*

Residential Care, where permitted, *v. 26, p. 338.*

Sanitary land fills, issuance of permits for, *v. 26, p. 348.*

Setbacks, consistent with character of area, *v. 25, p. 367.*

Shopping center in residential district, *v. 25, p. 383.*

Signs,

Acquisition of vested rights in, *v. 25, p. 426.*

"For Sale", prohibition of, *v. 26, p. 396.*

Fulfilling government function, exemption for, *v. 25, p. 425.*

Projecting, legality of, *v. 25, p. 385, p. 424.*

Proposals, *v. 24, p. 501; v. 25, p. 426.*

Proximity to residential use, *v. 25, p. 369.*

Special instance exceptions, necessity for health and welfare, *v. 25, p. 356; v. 26, p. 329.*

ZONING—Continued

Special use,

Chicago Public Library, v. 26, p. 349.

Church in a restricted service district, requirement for application, v. 26, p. 327.

Enforcement of conditions, v. 26, p. 350.

Expansion of, v. 26, p. 350.

Filing fee, exemption of C.T.A. from, v. 26, p. 368.

Generally, v. 25, p. 352, p. 424.

Granted by council action, v. 24, p. 502; v. 26, p. 329.

Granted by court order, v. 27, p. 186.

Mining of sand, v. 26, p. 330.

Parking lot, v. 25, p. 362.

Piggyback operation, v. 25, p. 390.

Who may apply for, v. 26, p. 319.

Storage of high sulfur content fuels, v. 27, p. 170.

Swimming pools, v. 24, p. 497.

Private regulation of, v. 26, p. 223.

Tavern in general residence district, v. 27, p. 202.

Temporary use of land, v. 24, p. 499.

Trailer camps, v. 25, p. 357.

Trucks on gas station premises, parking of, v. 24, p. 484.

Unimproved lot, size required for two family dwelling, v. 25, p. 382.

Variation,

Based on prior use, v. 25, p. 406.

Granted by Board of Appeals, v. 25, p. 372.

Necessary when required lot is "short", v. 25, p. 376.

Referral to joint Committee, v. 24, p. 479; v. 25, p. 353.

Restrictions on granted addition to building, v. 26, p. 351.

Vested right in, v. 24, p. 505; v. 25, p. 351, p. 352.

Who may apply for, v. 26, p. 319.

Walk-up window, v. 25, p. 356.

Water towers, height limitations, v. 24, p. 473.

MUNICIPAL CODE CROSS-REFERENCE TABLE TO VOLUMES 25, 26 AND 27

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
1	4-5	79		
1	9		262	
1	19	73		
2	7		98	
3	13-2	128		
3.2	.....		335	
4	2		1	
6	2			282
7	3			72
7	6		430	
7	20-1	66		
7	21		430	
7	22		3	
7	23		3	
7	26		3	
7	39		430	
7	41		450	
7	50		425, 431	
7.1	3		428	
7.3	4-6		335	
7.3	4-11		335	
7.3	5		335	
7.3	6		335	
7.3	7		335	
7.3	8		335	
8	2.2			362
8	2.3	277		
8	42	277		
8	168		132	
8.1	11		441, 471	323
8.3	3		44	
8.3	5		431	
8.4	1.11		349	
8.4	2.1		349	
8.4	12		456	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
9	5	.....	62	
9	13	.....	47	
9	14	 47		
9	16	.....	62	
9	26	.....	62	
10.4	2.4	.....	348	
10.4	3.1	.....	348	
10.5	3	.....	46	
11	1	.....	39	
11	3	.....		26, 28, 33
11	5	.....	30	
11	6	.....		28
11	9	 26		28
11	16	.....	191	
11	17	.....	188, 191	
11	20	.....	12, 188	
11	21	 277		
11	25	.....		22
11	32	 277		
11	33	.....	11	
11	36	.....	30	
11	44	.....	33	
11	45	 111		
11	47	 25	30, 65	
11	1	 184, 186	197, 198	
11.1	7	.....	191, 192	
11.8	8	.....	191, 192,	
			197	109
11.1	11	.....	185, 190	
11.1	14	.....	190	
11.1	15	.....	185, 190,	
			193, 200	
11.2		.....	189, 197	110
11.2	1-2	.....	71	
11.2	1-4	.....	198, 199	
11.2	1-7	.....	196, 197	
11.2	1-8	.....	185	
11.2	2	.....	327	
11.3	3	.....	319	
11.7	3	.....	319	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
11.8	1		319	
11.10	3		319	
12	15		81	
12	24		80	
12	49.1			52
12	54		119	
14	14.4		390	
14	22			100
14	24			100
16	4		70	
16	5		70	
17	1.11		78	
17	3.15		77	
17	4.14		46	
17	4.2		181	
17	5.1		78	
17	5.4		78	
17	5.6		77	
17	5.7		77, 78	
17	7.3		79	
17	23	37		
17	32	37		
17	48		285	
17	50		285	
17.6	1		325	
17.6	2		325	
17.6	3			203
21	1		277, 280	
21	2	277, 280		
21	13	300		
21	14	300		
21	15	300		
21	16	300		
21	17	300		
21	18	300		
21	22	277		
21	60			40
21	61	53		
21	61.1			40
21	64		308, 308, 312	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
21	64.1		308, 309, 312	
21	64.2		308, 309, 312	
22	3			85
22	4			85
22	18	111, 152		
22	19	111, 152		
22	20	111, 152		
22	21	111, 152		
22	22	111, 152		
23	2			135
24	1		73	
24	2	69		
24	3	69		
24	5	69		
24	6	69		
24	11-80.2			236
24	11-80.11			236
24	11-80.13			236
24	21-64d		309	
25	6	123		
25	7	127, 128		
25	11	85, 277		
25	23			50
25	30			67
25	57		74	
26	1		487	
26	13		482, 489, 496	266, 349
26	13.1		496	
26	16		427	
26	26			335
27	1		378	
27	3-1		22	
27	200	283, 433, 436	397, 398	
27	202		407	
27	207		410	
27	212		409	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
27	215	438		
27	216	438		
27	217	438		
27	266	439		
27	269	445		
27	275		257	
27	276		398	
27	305		402, 403	
27	306		402, 403	
27	307		402, 403	
27	308	433	402, 403,	
			410	
27	309		402, 403	
27	310		402, 403	
27	311	433, 441	398, 402,	
			403	
27	312		402, 403	
27	313		402, 403	
27	314		402, 403	
27	315		402, 403	
27	316	433	402, 403	
27	317		402, 403	
27	318	433	402, 403	
27	319	276, 434	257, 398,	
			402	
27	320		402	
27	321		402	
27	322		402	
27	324		402	
27	325	440	402	
27	326		398, 402	
27	327		402	
27	328		402	
27	329		402	
27	330		402	
27	331		402	
27	332		402	
27	337		443	
27	341	309		238
27	349	283		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
27	357	.....		238
27	360	.....	411	
27	361	.....	411	
27	363	 435	397	
27	364	 425, 431		
27	365	 439, 444	405	244
27	372	.....	397	
27	373	.....	39	
27	381	.....	22, 405	244
27	381.3	.....		250
27	384	.....	39	
27	390	 29		
27	393	.....	39	
27	397	.....		248
27	400	.....	409	
27	410	.....	403	
27	411	.....	385, 403	
27	412	.....	398	
27	413	.....	398	
27	414	.....	398	
27	428	.....		14
27	429	.....		14
27	430	.....		250
27	432	.....		398
28	—	 146, 138, 141		
28	1	 41, 271, 272, 273, 280		139
28	1	.....	255	
28	1	.....	272	
28	1.3	 140, 131, 132		
28	1-3	.....	247, 248, 249, 251	
28	1.4	 143		
28	1.4	.....	247	
28	1-6	.....	247	
28	1-10	.....	254, 261	
28	1-12	.....	254	
28	1-13	.....	254, 261	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
28	2	41, 284, 400		146, 130
28	3	279	393	
28	4	131		
28	4.1	142, 133		
28	5	270		
28	5.1		257	
28	6	270		
28	9	272, 279		
28	9.1		261	141
28	12	280	260	136
28	13		256, 259	
28	14	270		
28	15	270	254	
28	18	272		
28	19	279		143
28	20		255	
28	24		254	
28	32	400		
28	35			136
29	1			137
29	2		262	259, 137
29	4		471	
29	5	280	257, 259	
29	15		471	
29	19	272	272	
31	2	74		
33	—			223
33	14	403		
33	15	403		236
33	16	403, 413		236
33	17	403, 413		236
33	18	307, 403	283	236
33	19	403		
33	20	403		
33	21	403		
33	22	403		
33	23	409	389	
33	24	409		
33	25	409		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
33	26	409		
33	27	409		
33	28	409		
33	29	409		
33	30	409		
33	31	409		
33	32	409		
33	33	409		
33	34	409		
33	35	409		
33	36	409		
33	37	409		
33	38	409		
33	39	409		
33	40	409		
33	41	409		
33	42	409		
33	43	409		
33	44	409		
33	45	409		
33	46	409		
34	3	383		
34	4	237		
34	14			229
34	17			229
34	34.1		382, 389	
34	36-49			234
34	41		391	
34	44	413		
34	45	413		
34	46	413		
34	47	413	391	
36	—			229
36	11	204, 384		
36	12	204		
36	13	204		
36	14	204		
36	15	204		
36	16	204		
36	17	204		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
36	18	204, 384	204	
36	19		390, 391	
36	28	421, 422, 425		240
36	28.1		393	
36	28.2		393	
36	28.3		393	
36	29	421		
36	30		394	243
36	31		387	
36	49	236, 411		
36	49.1		157, 387	
36	50		393	
37	11(d)(2)			365
37	13			359, 362
37	13.1			246
37	13.3			154
38	34	80	97	
38	35	80		
39	12	326		
40	8	363		
41	1	65		
42	1	353	277	
43	1		277, 304	162
43	2			162
43	16	246		
43	18			113
45	2			
46	7		292, 306	
46	11		306	
46	40		423	
46	41		423	
47	2	247		171, 225
48	4			225
48	12	84		
50	3.2b		405	
50	4	353		
53	3		80	
54	4			171
54	8.13			225

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
57	11			168
60	2		188	
60	8	329		
60	10	329		
60	11	248		
60	13			49
60	25		329	
60	52		188	
60	53	329	344	
60	53			113
60	82			113
60	101			113
61	5	237		
61	18		223	
61	18.19		223	
61	19.1			222
62	1		80	
62	3			162
62	11.2(b)			184
63	9	347		
64	1	73		
64	3	73		
64	4	347		
66	5.11			225
66	5.3			225
66	5.7			225
67	1	342		
67	4			162
67	9	241		225
67	10			225
67	10.3			225
67	10.4			162
67	12			225
76	6.2		277	
76	6.5		277	
78	1	342		
78	8	332		
78	10			162
78	10.2			162
78	15	328		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
81	7		329	
81	11		204	
82	2			359
86	10	344		
86	10(e)			165
86.1	12			241
90	4			113
90	12	84		
90	22	67		
90	61	236		
95	28		220	
95	29.1		220	
96	4	242		
98	8			330
98	14		209	
98	27.1		282	
98	27.2		282	
98	32	46		
98	37		29	
98	38		29	
98	42	29		
99	1			118
99	3	247		
99	6	209		43
99	9	247		
99	15	246, 250		
99	16	250		
99	17	250		
99	18	84		
99	36			118
99	36.1			118
99	42		467	
99	56		181	
99	61	246	204	
99	61.9		315	
99	74	246		
99	77	250		
100	2			176
100	2-5			166, 178

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
100	29		70	
100	29.1		70	
100	29.15			117
100	29.5			117
100	—			21
100	1	290, 305, 322	272, 281	
101	2		252, 271, 272, 274	
101	3		234, 272	
101	4	290, 314	234, 287	
101	5	290, 305	272, 287	
101	5			148
101	6		272	
101	7		272	
101	8		272	
101	9	263	272	
101	10		272	
101	11		272	
101	12		272, 296	
101	13		271, 272	
101	14		272, 423	
101	15		272	
101	16		272	
101	17		272	
101	18		272, 288	
101	19		272	
101	20		272	
101	21		272	145
101	22		272	
101	23		272	
101	24		272	
101	25		272	
101	26		272	
101	27		183, 271, 272, 274, 288	
101	28		272	
101	29		272	
101	29.1		390, 391	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
101	30	272, 288		
102	3	386		
103	—			141
103	1	284	287	
103	1(a)			141
103	2		287	141
103	6.1		79	
103	6.2		56, 79	
103	12		247	
103	13		247	140
103	14		246	
104	1	285, 286, 288, 289, 290, 292, 296, 297, 298, 300, 301, 303	268, 270, 271	148
104	1-1		266	147
104	1-2		266	147
104	1.7		270	
104	2	285, 286, 287, 288, 294, 296	268	
104	2		147	
104	2-9			149
104	3	285		
104	3			147
104	4	298	270	
104	5		270	
104.1	1		268	
104.1	2		268, 270	
104.1	5		267	
104.1	7		268	
106	2		226	154
106	3			152
106	8		226	
107	1	308		
107	3		273	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
107	8		220	
110	—	300		
113	1	323	275, 290	
113	2		290	
113	5		290	
113	22	234		
113	23	321		
117	1	34, 225, 318	281	
118	1		279, 281	
118	1.1		279	
118	1.2		279	
119	4	318		
119	5	318		
121	4	309		
121	13	309		
121	13.1		329	
121	13.2		329	
121	13.3		329	
121	13.4		329	
121	13.5		329	
121	13.6		329	
123	1		277	
125	1		188	
125	3		188	
125	21		188	
125	27	239, 251		
125	28	239		
125	31		285	
125	33	251		
127	5	363		
127	12			113
128	2	312		
128	4	312		
128	8	312		
129	1	215		
129	68	335		
129.1	4			113
130	32.2-32.10			154

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
130	1		182, 234	
130	6		220	
130	8.1		180	
130	15		178	
130	15-1	242, 276,		
		292	181	
130	15-2	242, 276	180	108
130	15-3	242, 275		
130	15-4	242, 276		36
130	15-5	242, 276	180	108
130	15-6	242, 276		
130	15-7	242, 276		
130	15-8	242, 276	180	
130	15-9	242, 276		
130	15-10	242, 276		
130	15-11	242, 276		
130	15-12	242, 276		
130	15-13	242, 276		
130	15-14	242, 276		
130	15-15	242, 276	179	
130	15-16	242, 276		
130	15-17	242, 276	220	
130	15-18	242, 276		
130	15-19	242, 276		
130	15-20	252, 276		
130	16		178, 183,	
			277	
130	18		178, 277,	
			278	108
130	21			36
130	32.1			36
130	39		220	
132	35			264
133	30	234		
135	.....	311		
135	1		195	
135	6	311	188, 195	
135	11	311		
136	3	47		
136	.....	47		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
136	9	47		
136	10	47		
136	15	47		
136.2	1		335	39
137	1	322, 331	51	
137	9		80	
137	11		51	
137	14		53	
139	3	218		
139	8	46		
141	—		389	
145	1		286	
145	3		423	
145	4		309	
145	7		423	
145	22		423	
145	24	309	214, 287, 423	
147	—		212	
147	1		205, 207, 231	
147	2		69, 205, 226, 231, 234	
147	3		257, 260, 263	
147	8		233	
147	9		244	
147	10		220	
147	11	260		
147	12		228	
147	13	256, 264	207	
147	14		26, 48, 207, 212, 215, 233	130, 132
147	15	267	9, 43, 26, 244, 246	
149	—	311		
150	18		289	
150	19		289	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
150	23	239		
150	27	319		
150	28	319		
150	30	319		
150	32	319		
154	2	218		
154	4	51		
155	—	294	216	34
155	1	298		153
155	2	298		
155	3	298		
155	4	298		
156	2	331		
156	11	331		
156	12	331		
156	13	337, 347	404, 405	218, 244
156	15			218
156	17	347	404	
156	17.1		404, 405	
156	18		286	
156.1	—		407	
156.1	1		156, 406, 407, 416, 417	
156.1	2		417	
158	6		276	
158	7		276	
159	6	233		
160	—		389	
160	1	276, 312		108
160	2	276		
160	13	237, 246	180, 181, 384	108
161	3		292	
161	8		292	
162	—		294	
162	8		295	
162	10		295	
162	18.3		295	
162.1	—		293	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
167	1		277	
167	3		277	
167	8.1			116
170	—		46	
170	1	227		
170	2	227		
170	3	227		
170	4	227		
170	5	227		
171	5	320		
172	—	277		
173	—			21
173	1	281		
173	2		44	
173	7		44	
173	8		44	
173	11	225	44, 160	32
174	2		210	
174	9		210	
178	6		224	
178	9	314	234	
178	11	314		
178	12			154
178	21	314		
178	22	314		
178	23		211	
178	24		224	
178.1	4b		414	
179	1		257	
179	15		257	
181	2.1		297	
181	9		297	
183	—	225	184	
183	1	221	195	
183	2	221		
183	3	221		
183	4	221		
183	5	221		
183	6	221		
183	7	221		

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
183	8	221		
183	9.4		195	
183	10	221	201	
183	14	221	201	
183	15	221	201	
185	47			321
188	44		363	
188	49			234
190	2	247	10	
190	4		212	
190	7	227		
190	11	227		
191	4			111
192	6	36		
192	7		212	
192	8		46	
192	9		46, 266	
192	11	249	224	
192	12	249	224	
193	—		6	
193	1	243	11, 12	359, 109
193	1.2		212	
193	2			149
193	3	243	212	
193	7	15	39	29
193	10		10	
193	20			243
193	26	295		
193	29	227		110
193	30	225	44, 202	
193	31	227, 230	201	
193	32	240	213	
194A	3.2		342, 344	
194A	5			168, 184
194A	5.6-2		339	
194A	5.6.3		339	
194A	5.7-5		339	
194A	5.7-6			188
194A	5.9		354	
194A	5.10		330	

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
194A	6.4-1		338	
194A	6.4-2			192
194A	6.4-6			192
194A	6.4-8		333	
194A	6.5-2			199
194A	7.4-1		342	
194A	7.5-(2)			189
194A	7.5-(5)			189
194A	7.9-6		339	
194A	7.9-7		339	
194A	7.10-1		396	
194A	7-12		314	
194A	8.3-2		318	
194A	8.3-3		318	
194A	8.4		327	
194A	8.9			241
194A	8.10-1		403	
194A	8.10-5		403	
194A	8.11-4		342	
194A	10.4-2		325, 330	
194A	10.4-3		325, 330	
194A	11.2-2		350	203
194A	11.2-3		325	
194A	11.2-4			203
194A	11.4-1		342	
194A	11.7-4		325, 339	
194A	11.8-1		339	
194A	11.8-2		325, 339	
194A	11.9-1			189
194A	11.10			244
194A	11.10-1		325	
194A	11.10-2		325	
194A	11.10-3		325	
194A	11.10-4		325	
194A	11.10-5		325, 350	
194A	11.11		368	
194A	17.12-9		339	
194B	4.2(b)			182
194B	6.1(c)			182
194B	601(c)			174

MUNICIPAL CODE CHAPTER	MUNICIPAL CODE SECTION	OPINION PAGE		
		VOLUME 25	VOLUME 26	VOLUME 27
197	A-1	4		
198	7	15		
198	7B		163, 218	242
199A	.....		499	
199A	1	8		361
199A	2			361
199A	3			361
200	4			236
200.1	—		260	
200.1	2B			263
200.3	1G			255, 258
200.3	1H			255
200.3	8			262
200.3	9B			255
200.3	16(6)			256

ILLINOIS REVISED STATUTES CROSS-REFERENCE TABLE TO VOLUMES 25, 26 AND 27

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
3	131	.....	21	121, 132
3	166	.....	67	
3	324	.....		79
8	10-12	.....		332
8	23p	.....	59	
8	37f	.....	515	
8	101	.....		141
10½	2	.....	316	
11	14-4	.....		189
11	13-20	.....		189
11	133-1	.....		3
11	133-2	.....		3
13	101	.....		141
15½	48	.....	354	
15½	48.17	.....		187
16½	30	.....		150
16½	32	.....		150
16½	101	.....	427	
16½	133	.....	189	
16½	134	.....	189	
16½	135	.....	189	
21	64.1	.....		54
21	64.2	.....		54
23	3	.....	133	
23	424	.....	53	
23	1701	.....	66	
23	2359	.....	193	
23	2371	.....	10	
23	2372	.....	10	
24	1	.....	13	
24	1-1-2	.....	94	
24	1-1-3	.....		5
24	1-1-7	.....	22	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	1-2	 278, 474		
24	1-2-1	.....	75	
24	1-2-4	.....	421	
24	1-2-9	.....	75	
24	1-4-1	 487		
24	1-4-2	 487		
24	1-4-4	.....	446	
24	1-4-5	.....	41, 42	
24	1-15	 62		
24	1-45	 81		
24	3	.....		4
24	3-2-7	.....	4	
24	3-2-8	.....	4	
24	3-4-6	.....	4	
24	3-6-2	.....	263	
24	3-6-5	.....	41	
24	3-7-3	.....	36	
24	3-7-3.1	.....		268
24	3-9-2	.....	263	
24	3-10-1	.....	92	
24	3-10-7	.....	5	
24	3-10-9	.....	263	
24	3-10-10	.....		268
24	3-11-8	.....		268
24	3-11-17	.....		268
24	3-11-18	.....		268
24	3	.....		4
24	3-14-4	.....		78, 377, 378
24	3-7-3.1	.....		28, 33
24	3-7-3.2	.....		28
24	4	.....		4
24	5-3-10	.....	39	
24	5-15-8	.....	143	
24	7-1-13	.....	377	
24	7-4-7	 33		
24	7-48	 33		
24	8-1-2	.....		5
24	8-1-6	.....	431	
24	8-1-7	.....	431	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	8-1-8	-----	438	
24	8-1-16	-----		278
24	8-2-1	-----	3	
24	8-2-2	-----	3	
24	8-2-3	-----	3	
24	8-2-4	-----	3, 431	
24	8-2-5	-----	3, 431, 453	
24	8-2-6	-----	3	
24	8-2-7	-----	3, 431	
24	8-2-9	-----	421	
24	8-3-1	-----	421	
24	8-3-13	-----	415	
24	8-4-12	-----	456	
24	8-10	-----	475	
24	8-10-1	-----	167	31
24	8-10-2	-----	167	
24	8-10-3	-----	167, 487, 490	
24	8-10-4	-----	167, 481, 497	
24	8-10-5	-----	167, 490	
25	8-10-6	-----	167	
24	8-10-7	-----	167	
24	8-10-8	-----	167	
24	8-10-9	-----	167	
24	8-10-10	-----	167	
24	8-10-11	-----	167, 473	
24	8-10-12	-----	167	
24	8-10-13	-----	167	
24	8-10-14	-----	167	
24	8-10-15	-----	167	
24	8-10-16	-----	167	
24	8-10-17	-----	167	
24	8-10-18	-----	167	
24	8-10-19	-----	167	
24	8-10-20	-----	167	
24	8-10-21	-----	167	
24	8-10-22	-----	167	
24	8-10-23	-----	167	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	8-10-24	.....	167	
24	8-10-25	.....	490	
24	8-11	 452, 475		
24	8-11-2	.....		256
24	8-11-4	.....	263, 426	
24	9-87	 65		
24	10-1	 30, 103, 114, 118	479	
24	10-1-7	.....	106, 107	
24	19-1-12	.....	111	
24	10-1-13	.....		295
24	10-1-14	.....	36, 111	
24	10-1-16	.....	112, 114	65
24	10-1-17	.....	106	
24	10-1-18	.....	26, 30, 36, 89	64
24	10-2.1-4	.....	43	
24	10-2.1-6	.....	101	
24	10-2.1-17	.....	101	
24	10-3-8	.....	91	
24	10-3-9	.....	91	
24	10-3-10	.....	91	
24	10-3-11	.....	91	
24	10-4-3	.....	117	
24	10-9	 160, 163, 164, 165		
24	10-7-51	.....	143	
24	10-9	 148, 149, 150		
24	11-1-1	.....	39	
24	11-1-2	.....	39	
24	11-4-4	.....	124	
24	11-4-21	.....	124	
24	11-5-5	.....	22	
24	11-6-1	.....	89	
24	11-8	 332		
24	11-8-1	.....		52
24	11-11	.....	163	
24	11-11.1-1	.....		105

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	11-11-2	.....	167	
24	11-12	.....	506	
24	11-13-1	.....	331, 356	
24	11-13-3	.....	324, 325	
24	11-13-4	.....	319, 324	
24	11-13-11	.....	324	
24	11-13-12	.....	319, 324	
24	11-13-13	.....	321, 324	
24	11-19.1-11	.....	76	
24	11-28	 58		
24	11-29	 57	66	44
24	11-29-1	.....	61	
24	11-29-6	.....		45
24	11-29-8	.....	60, 61,	
			66	
24	11-29-8.1	.....	61	
24	11-29-13	.....	66	
24	11-29-14	.....	66	
24	11-29-15	.....	66	
24	11-29-16	.....	66	
24	11-29-17	.....	61	
24	11-29-18	.....	61	
24	11-29-22	.....	61	
24	11-30	 331		
24	11-30-4	.....		166
24	11-31-2	.....		172
24	11-32-1	.....		161
24	11-34-1	.....		161
24	11-37-1	.....		161
24	11-41-1	.....	426	
24	11-42	 288, 290, 292, 312		
24	11-42-1	.....	274, 288	
24	11-42-2	.....	288	
24	11-42-3	.....	288	
24	11-42-4	.....	288	
24	11-42-5	.....	183, 271, 288	
24	11-42-6	.....	254, 261, 288	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	11-42-7	.....	288	
24	11-42-8	.....	288, 289	
24	11-42-9	.....	288	
24	11-42-10	.....	220, 288	
24	11-42-11	.....	288	
24	11-48.2-1	.....	308, 309, 312	
24	11-48.2-2	.....	308, 309, 312	
24	11-48.2-3	.....	308, 309, 312	
24	11-48.2-4	.....	308, 309, 312	
24	11-48.2-5	.....	308, 309, 312	
24	11-48.2-6	.....	308, 309, 312	
24	11-48.2-7	.....	308, 309	
24	11-61-1	.....		95
24	11-61-2	.....		95
24	11-71	.....	432	
24	11-71-1	.....	431, 458	
24	11-71-2	.....	431	
24	11-71-3	.....	431	
24	11-71-4	.....	431	
24	11-71-5	.....	431	
24	11-71-6	.....	431	
24	11-71-7	.....	431	
24	11-71-8	.....	431	
24	11-71-9	.....	431	
24	11-71-10	.....	431	
24	11-76-2	.....	380	 315
24	11-80	.....	312, 403, 419	
24	11-80-1	.....	388	
24	11-80-2	.....	385, 388, 400	
24	11-80-3	.....	383, 388	
24	11-80-4	.....	378, 388	
24	11-80-5	.....	388	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	11-80-6	-----	388	
24	11-80-7	-----	388	
24	11-80-8	-----	388, 389	
24	11-80-9	-----	388	
24	11-80-10	-----	388	
24	11-80-11	-----	388	
24	11-80-12	-----	388	
24	11-80-13	-----	388, 390	----- 226
24	11-80-14	-----	388	
24	11-80-15	-----	388	
24	11-80-16	-----	388	
24	11-80-17	-----	388	
24	11-80-18	-----	388	
24	11-80-19	-----	388, 400, 467	----- 226
24	11-80-20	-----	388	
24	11-80-21	-----	388	
24	11-80-22	-----	388	
24	11-84-1	-----	390	
24	11-84-8	-----	390	
24	11-91-1	-----	382	----- 218, 238
24	11-91-2	-----	382	
24	11-101-3	-----	506	
24	11-102	-----	506	
24	11-107	-----	419	
24	11-121	-----	404, 405	
24	11-121-2	-----	514	
24	11-133	-----	472	
24	11-133-3	-----	425	
24	11-135-8	-----	468	
24	11-137-5	-----	468	
24	11-141-7	-----	469	
24	15	-----	-----	4
24	20	-----	5	
24	21-9	-----	427	
24	21-20	-----	245	
24	21-23	-----	1	
24	23-57	-----	231	
24	23-61	-----	245	
24	24-1	-----	201	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
24	24-9	.....	149	
24	29-7	.....	55	
24	49-11	.....		319
24	63-1	.....	409	
24	63-2	.....	409	
24	63-3	.....	409	
24	63-4	.....	409	
24	63-5	.....	409	
24	63-6	.....	409	
24	63-7	.....	409	
24	63-8	.....	409	
24	71	.....	458	
24	84-7	.....	409	
24	113-20	.....	310	
24	113-23	.....	310	
24	119	.....	178	
24	944	.....	146	
24	950	.....	156	435
24	955	.....	147	
24	956	.....	167	
24	983	.....	167	
24	985a	.....	170	
24	989	.....	154	
24	991	.....	157	
24	1002	.....	155	
24	1055	.....	136, 137	
24	1077	.....	136	
24	1082	.....	187	
24	1955	.....	136, 137	
24	1103	.....	133	
24	1108	.....	177	
24	1119	.....	134, 182	
24	1144	.....	176	
24	1146	.....	181, 187	
24	1153	.....	178	
24	1155	.....	179	
24	1166	.....	183, 184	
24½	51	.....	88	
24½	152	.....	88	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
26	1-201	-----	47	
26	3-409	-----	118	
26	3-419	-----	119	
26	3-603	-----	119	
26	8-405	-----		297
26	9-503	245		
28	2	-----		112
29	17	245		
29	18	561		
29	19	561		
29	20	561		
29	21	561		
29	22	561		
29	23	561		
29	33a	-----		5, 95
29	24	561		
30	37	504	95	
30	156	-----		315
30	157	-----		315
32	157.43	-----		132
32	157.94	-----		346
32	157.102	-----		147
32	157.127	-----	95	
32	163a	-----	95	
32	701	189		
34		56		
34	919	-----		247
37	701	-----	21	
37	703-1	-----		24
37	703-4	-----		24
37	704-4	-----		24
37	707-3	-----		24
38	2-7	-----	249	
38	2-12	-----		22
38	2-13	-----	44	
38	3-5	-----	12	
38	3-7a	-----	12	
38	3-7c	-----	12	
38	5-4	-----	301	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
38	7-12	 41		
38	11-20	.....	46, 266	
38	12-1	.....	301	
38	12-3	.....	301	
38	12-5	.....	301	
38	12-6	.....	18	
38	12-7	.....	18	
38	13-1	.....	304, 499	 126
38	13-2	.....	304, 499	 126
38	13-3	.....	304, 499	 126
38	13-4	.....	304, 499	 126
38	16-1	.....	3	
38	19	.....		13
38	21-1	.....	301	
38	21-3	 528		359
38	22-2-17	.....	200	
38	22-3	.....		131
38	22-40	.....	249	
38	24-1	 34, 225, 281	191, 198, 202	
38	24-1(3)	.....		109
38	24-2	 224, 281, 528	44, 71, 198, 199	
38	24-3.1	.....	191	
38	24-6	.....	191	
38	26-1	.....	11	
38	28-1(a)	.....		111
38	28-1(b)	.....		111
38	28-1.1	.....		111
38	28-5	.....	203	
38	31-1	.....	11	
38	33-3	.....	438	
38	82	.....	201	
38	83-2	.....	191, 192	
38	103-2(c)	.....		19
38	107-2	.....	19, 190	 22
38	107-3	 37	160	
38	107-9	.....	190	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
38	108-2	.....		12
38	108-11	.....		12
38	108-12	.....	12	
38	109-1	.....	27	
38	111-5	.....	451	
38	118-1d	.....	249	
38	122-1	.....	12	
38	123-7	.....	27	
38	125	 8		
38	152	 221		
38	205-6	.....	8	
38	206-5	.....	7, 14	
38	249	 234		
38	608	 34		
38	1005-3-2	.....		20
38	1005-3-3	.....		20
42	3-24	.....	368	
43	1	.....		124, 128
43	2	.....		123, 128
43	4	.....		124
43	10	.....		124
43		.....	242	
43	95.18	.....	240	
43	95.21	.....	26, 205, 207, 240	
32	95.22	.....	207	
43	95.23	.....	226	
43	95.24	.....	182	
43	96	.....	47, 69	
43	108	.....	232	
43	109	.....	232	
43	110	.....	69, 207, 233, 234	140
43	120	 268		95
43	120-11	.....	266	
43	120-13	.....	227, 232	
43	120-14	.....		4
43	121e	.....	236	
43	127	 258	69, 229, 233	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
43	129	.....	209	
43	130	.....	69, 225	
43	131	 266	21, 212,	
			233	121
43	133	 266	255	126
43	134(a)	.....		121
43	141-6-20	.....	205	
43	141	.....	226	
43	142	.....	226	
43	149	.....	243	
43	156	.....	296	
43	157	.....	234	
43	166	.....	94, 236	
43	167	.....	236, 240,	
			356	
43	173.1(b)	.....		129, 130
43	174	.....	237	
43	176	.....	240	
43	177	.....	47	
43	181	.....	241	
43	183	.....		121
46	1-3.5	.....	239	
46	14-11	.....	413	
46	17	 261		
46	17-27	.....	239	
46	17-29	.....	222	
47	10	.....	163	
47	14	.....	168	
47	95.18	.....	226	
47	95.21	.....	226, 231	
47	96	.....	231	
48	31.7	.....	207	
48	138-1	.....	41	
48	197	 307		
48	198.1	.....	215	
48	420	.....	65	
48	851	 561		
48	852	 561	101	
48	853	 561		
48	854	 561		

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
48	855	----- 561		
48	856	----- 561		
48	857	----- 561		
48	858	----- 561		
48	859	----- 561		
48	860	----- 561		
48	861	----- 561		
48	862	----- 561		
48	863	----- 561		
48	864	----- 561		
48	865	----- 561		
48	866	----- 561		
48½	7	-----	285	
51	101	-----	53	42
53	65	-----		75
67	19	----- 187		
67½	8	----- 216		
67½	30c	-----	368	
67½	37	-----	368	
67½	63	----- 64		
67½	91	----- 6, 526		
67½	91-13	----- 68		
67½	91.101	-----	154, 155, 169, 428, 429	
67½	91.102	-----	154, 155, 169, 429	
67½	91.103	-----	154, 155, 429, 483	
67½	91.104	-----	154, 155, 169, 429	
67½	91.105	-----	154, 155, 169, 429	
67½	91.106	-----	154, 155, 169, 429	
67½	91.107	-----	154, 155, 166, 169, 300, 429	
67½	91.108	-----	154, 155, 169, 429	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
67½	91.109	-----	154, 155, 169, 429	
67½	91.110	-----	154, 155, 169, 429	
67½	91.111	-----	154, 155, 169, 429, 483	
67½	91.112	-----	154, 155, 169, 429	
67½	91.113	-----	154, 155, 169, 429	
67½	91.114	-----	154, 155, 169, 429	
67½	91.115	-----	154, 155, 169, 429	
67½	91.116	-----	154, 155, 169, 429	
67½	91.117	-----	154, 155, 169, 429	
67½	91.118	-----	154, 155, 169, 429	
67½	91.119	-----	154, 155, 169, 429	
67½	91.120	-----	154, 155, 169, 429	
67½	19.121	-----	154, 155, 161, 169, 374, 429	
67½	91.122	-----	154, 155, 169, 374, 429	
67½	91.123	-----	154, 155, 169, 429	172
67½	91.124	-----	154, 155, 169, 429	
67½	91.124(a)	-----		172
67½	91.125	-----	154, 155, 169, 374, 429	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
67½	91.126	-----	154, 155, 169, 429	
67½	91.127	-----	154, 155, 167, 169, 429	
67½	91.128	-----	154, 155, 169, 429, 456, 457	
67½	91.129	-----	154, 155, 169, 429	
67½	91.130	-----	154, 155, 169, 428, 429	
67½	91.131	-----	154, 155, 169, 429	
67½	91.132	-----	154, 155, 169, 429	
67½	91.133	-----	154, 155, 169, 429	
67½	91.134	-----	154, 155, 169, 429	
67½	91.135	-----	154, 155, 161, 169, 429	
67½	91.136	-----	154, 155, 169, 429	
68	15	-----		24
70	10	-----	421	
73	733	-----	280	
74	19	-----		19
74	31a	-----	215	
75	35	-----	71	
77	3	-----	344	
77	7	-----	445	
80	37	-----		107
80	38	-----		107
81	1-1	-----	92	
81	1-6	-----	92	
81	4-8	-----	92	
81	5-9	-----	92	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
82	23	 464, 469, 471		267, 340, 349
82	99	.....	53	
83	16	.....	12	
83	23	.....	488	
84	1	 202		
84	1-102	.....		282
85	1-101	.....	76	
85	1-106	.....		297
85	1-204	.....	470	
85	2-109	.....		285
85	2-202	.....		285
85	2-302	.....	42	
85	3-104	.....		224
85	6-106	.....	64	
85	8-101	.....	470	
85	8-102	.....	470	
85	8-103	.....	470	
85	902	.....	427	
85	1044	.....	69	
85	1221	.....	384, 515	
85	1222	.....	384, 515	
85	1223	.....	384, 515	
85	1224	.....	384, 515	
85	1225	.....	384, 515	
85	1226	.....	384, 515	
85	1227	.....	384, 515	
85	1228	.....	384, 515	
85	1229	.....	384, 515	
85	1230	.....	384, 515	
85	1231	.....	384, 515	
85	1232	.....	384, 515	
85	1233	.....	384, 515	
85	1234	.....	384, 515	
85	1235	.....	384, 515	
85	1236	.....	384, 515	
85	1237	.....	384, 515	
85	1238	.....	384, 515	
85	1239	.....	384, 515	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
85	1240	-----	384, 515	
85	1241	-----	384, 515	
85	1242	-----	384, 515	
85	1243	-----	384, 515	
85	1244	-----	384, 515	
85	1245	-----	384, 515	
85	1246	-----	384, 515	
85	1247	-----	384, 515	
85	1248	-----	384, 515	
85	1250	-----	515	
89	4	-----	117	
91	18	-----		36
91	18.1	-----	219	
91	127	-----		315
91	133	-----		52
91½	7-1	-----	21	
91½	9-11	-----	251	
91½	12-12	-----	21	
91½	77-9	-----	241	
91½	141	-----	241	
91½	151	-----	241	
91½	201	-----	241	
93	144	-----	188	
95½	1	-----	272, 280	
95½	1-126	-----		224
95½	1-166	-----	368	
95½	3-901	-----	263	
95½	4-200	-----		14
95½	4-202	-----	411	
95½	4-208	-----		31
95½	4-211	-----		31
95½	4-212	-----		31
95½	6	-----	41	
95½	8	-----	41	
95½	8-104	-----	260	
95½	11-209	-----	400	244
95½	11-301	-----		248
95½	11-305(c)	-----		248
95½	11-601	-----	409	
95½	11-604	-----	408	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
95½	32a	.....	263, 426	
95½	47	.....	464	
95½	99	.....	24	
95½	100	.....	313	
95½	119.1	.....	24	
95½	120	.....	24	
95½	122	.....	410	
95½	123	.....	410	
95½	123.1	.....	22	
95½	129	.....	407	
95½	133	.....	313	
95½	146.01	.....	396	
95½	150	.....	24	
95½	169	.....	24	
95½	187	.....	433	
95½	189	.....	445	
95½	210d	.....	24	
95½	213	.....	431	
95½	218	.....	435	
95½	224	.....	313	297, 392
95½	283.3	.....	49	
96	1-3	.....		26
96	4	.....	496	
98	261	.....		297
100	6	.....	267	
102	3	.....		78, 377
102	3.2	.....		56
105	92	.....	503	
105	154	.....	415	
105	327	.....	503	
105	333	.....	208, 210	
105	333.02	.....	157	
105	333.1	.....	503	
105	333.51	.....	156	
105	333.52	.....	156	309
105	333.7	.....	157	
108½	5-109	.....		87
108½	5-120	.....		87
108½	5-132	.....		86

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
108½	5-146(e)	.....	.....	86
108½	5-157	.....	120	
108½	5-159	.....	120	
108½	5-159(b)	.....	.....	87
108½	5-167.2	.....	.....	86
108½	5-167.4	.....	146	
108½	5-169	.....	145	
108½	5-175	.....	146	
108½	5-187	.....	435	
108½	5-214	 170		
108½	5-227	.....	145	89
108½	6-147	 152		
108½	6-148	 152		
108½	6-152	.....	81	
108½	6-154	.....	120	
108½	6-156	.....	120	
108½	6-174	 152	.....	83
108½	6-177	 152		
108½	6-178	.....	.....	83
108½	6-181	.....	142	
108½	6-183	.....	435	
108½	6-209	.....	134	
108½	8-108	.....	129	
108½	8-113	.....	123, 148	
108½	8-121	.....	125	
108½	8-138	 140		
108½	8-161	.....	123	
108½	8-201	 141	435	
108½	8-228	.....	125	
108½	8-230.1	.....	126	
108½	8-232	 140		
108½	8-236	.....	129	
108½	8-244	.....	123, 128	
108½	9-108	.....	129	
108½	9-223	.....	129	
108½	11-110	.....	148	
108½	11-120	.....	.....	91
108½	11-138	.....	.....	91
108½	11-139	.....	.....	91
108½	11-140	.....	.....	91

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
108½	11-143	-----	-----	91
108½	11-190	-----	435	
108½	11-192	-----	150	
108½	11-196	-----	150	
108½	11-221	-----	148	
108½	11-231	-----	150	
108½	17-128	-----	5	
108½	17-147	-----	5	
108½	19-101	-----	124	
108½	20-101	-----	129	
108½	20-109	-----	129	
108½	20-118	-----	129	
108½	22-101	-----	126	
108½	22-306	-----	142	
108½	22-401	-----	5	
108½	22-402	-----	5	
108½	174	-----	126	
108½	182	-----	126	
109	1	-----	-----	189, 190
109	2	-----	-----	189, 190
109	6.7	-----	382	
110	23	-----	442	
110	24	-----	442	
110	26.2	-----	203	
110	50	-----	-----	1
110	236	-----	-----	1
110	275	-----	321	
111	1-8	-----	304	
111½	6	-----	293	
111½	16	-----	293	
111½	24	-----	62	
111½	86	-----	54, 56, 287	
111½	86.1	-----	51, 54, 56	
111½	86.2	-----	51, 54, 56	
111½	87	-----	54	
111½	116	-----	249	
111½	144A	-----	51	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
111½	240.15	-----	75	
111½	252	----- 335		
111½	476	-----	467	
111½	551	-----	220	
111½	552	-----	220	
111½	553	-----	220	
111½	554	-----	220	
111½	555	-----	220	
111½	556	-----	220	
111½	557	-----	220	
111½	558	-----	220	
111½	559	-----	220	
111½	560	-----	220	
111½	561	-----	220	
111½	562	-----	220	
111½	563	-----	220	
111½	564	-----	220	
111½	565	-----	220	
111½	566	-----	220	
111½	567	-----	220	
111½	568	-----	220	
111½	569	-----	220	
111½	570	-----	220	
111½	571	-----	220	
111½	572	-----	220	
111½	10.5	-----	368	
111⅔	32	-----		224
111⅔	32.1(b)	-----		215
111⅔	36	-----		256
111⅔	36(a)	-----		254
111⅔	57	-----	362, 363, 365	224
111⅔	58	-----	359	
111⅔	62	----- 308, 309	451	
111⅔	301	----- 319	368	
111⅔	303	-----	368, 458	
111⅔	306	----- 404		
111⅔	315	----- 404		

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
111 $\frac{2}{3}$	319	.....	.....	378
111 $\frac{2}{3}$	331	.....	367	
111 $\frac{2}{3}$	500	.....	370	
111 $\frac{2}{3}$	501	.....	371, 372	
111 $\frac{2}{3}$	505	.....	239	
111 $\frac{2}{3}$	512	.....	371, 421	
111 $\frac{2}{3}$	701.07	.....	.....	1
114	59	.....	363	
114	62	.....	360	
116	30-34	 71		
116	33-3	 28		
116	33-7	 28		
116	43	.....		27
116	43-10	 81		
116	43.101	.....		47, 48
116	43.106	.....		215
116	43.107	.....		48
116	43.28	.....	371	
116	43.6	.....	53	
116	43.103	 29		
116	113	.....		27
116	47.1	.....		215
120	73a	 463		
120	426	 449		
120	439	 452		
120	440	 589	418, 419	
120	441	.....		264
120	441(a) (b)	.....		264
120	452 $\frac{1}{2}$	 268		
120	453.103	.....	416	
120	467.2	.....		256
120	467.17	.....		256
120	482	.....	453	
120	500	 8		
121	2-104	.....	378	
121	2-201	.....		95
121	2-202	.....	378	
121	2-207	.....	378	
121	8-101	 489		
121	8-102	 489		

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
121	8-103	489	375	
121	8-104	489		
121	8-105	489		
121	8-106	489		
121	8-107	489		
121	8-108	489		
121	8-109	489		
121	9-112		394	
121	10-702	13		
121	10-704	13		
121	10-705	13		
122	27-8		58	
122	32-74		449	
122	34	383		
122	34-2		368	
122	34-3.1		413	
122	34-3.2		413	
122	34-3.3		413	
122	34-3.4		413	
122	34.4			48
122	34-13	113		
122	34-15	113		
122	34-17	383		
122	34-75		449	
122	101-1		104	
122	103-25		104	
122	103-32		104	
122	103-42		104	
122	103-42.1		43	
125	51		129	
126 $\frac{1}{2}$	57.16		114	
126 $\frac{1}{2}$	57.52		114	
127	49.19			100
127	63	189	114	
127	108b		114	
127	133(b)(10)			314
127	133(b)(11)			314
127	142i		515	
127	158		453	
127	213.1		313	

ILL. REV. STAT. CHAPTER	ILL. REV. STAT. SECTION	VOLUME 25	OPINION PAGE VOLUME 26	VOLUME 27
127	213.2	.....	313	
127	213.5	.....	313	
127	601-101	.....	31	
127	701	.....	460	100
131½	1-16	.....	316	
132	4	.....		256
132	17	.....		256
132	30	.....		256
141	1	.....		12
141	2	.....		12
141	141	.....	72	
144	7	.....		166
144	28	.....		52
146½	3.1	.....	441	
147	14	.....		121
147	4	.....	308	
147	12	.....	308	
147	13	.....	308	
147	14	.....	308	
147	15	.....	308	
147	16	.....	308	
147	37	.....	308	
147	119	.....	70	
147	129	.....	70	

1970 ILLINOIS CONSTITUTION CROSS-REFERENCE TABLE TO VOLUME 27

ARTICLE	SECTION	PAGE
1	2	218
6	16	16
3	6	105
7	6	100, 102, 106, 161
7	6(a)	95, 166, 172
7	6(e)	255
7	6(i)	103
7	6(j)	95
7	6(m)	255
7	12	103
8	1	16
8	1(a)	172

TABLE OF CASES

VOLUME 27

	PAGE
Abraham Lincoln Memorial Hospital v. Gordon	24
Adams v. Tanner	2
Adler v. Illinois Bell Telephone Co.	264
Agron v. Illinois Bell	254, 256
American Oil Corporation v. City of Chicago	194
American Tobacco Company v. Werckmeister	280
Anderson v. Berwyn	6
Arends v. Police Pension Fund	154
Arnett v. Kennedy	88
Baird v. Rochford	29
Bank and Trust Co. of Arlington Heights v. Cullerton	262
Barre v. Perry and Scribner	6
Bauer v. City of Chicago	154
Blackhawk Motor Trading Co. v. Illinois Commerce Commission	222
Board of Education of The City of Chicago v. The Industrial Commission	278
Bradley v. Cowels Magazines, Inc.	293
Bristol and Sale Co. v. Industrial Commission	282
Brown v. Kirk	56
Burton v. Wilmington Parking Authority	126
Buzinski v. The Do-All Company	293
Caliga v. Inter-Ocean Newspaper Co.	280
Calumet Federal Savings and Loan v. Chicago	231
C.A.M.P. v. Chicago	239
Capital Development Board v. City of Chicago	176
Carison v. Dell Publishing Co.	293
Charbonneau v. Norton	24
Chicago v. Belt Railway Co.	227
Chicago v. Board of Education	52

	PAGE
Chicago v. Chicago Railway Company	227
Chicago v. Gorham	317
Chicago Heights v. Western Union	154
Chicago v. Hertz Commercial Leasing Corp.	251
Chicago v. Illinois Commerce Commission	211, 212
Chicago Land Clearance Commission v. White	172
Chicago v. McKechney	6
Chicago Real Estate Board v. City of Chicago	204
Chicago v. Rhine	114
Chicago v. Slater	46
Chicago v. Union Traction Co.	229
City of Chicago v. Board of Governors of State Colleges and Universities	176
City of Chicago v. Emmitt McNeal	200
City of Evanston v. County of Cook	95
City of Monmouth v. Lorenz	162
Collins v. Schenectady	6
Collins, Tuttle and Company v. City of Chicago	184
Commonwealth v. Thackra Manufacturing Co.	111
Condon v. Forest Park	154
Cook County v. Chicago	52
County Collector v. City of Chicago	266
County of Cook v. John Seaton Contractors	203
County of Cook v. City of Chicago	161, 166
Cremer v. Peoria Housing Authority	16
Deasy v. Chicago	16
Dempsey v. City of Harrisburg	88
Department of Public Works and Buildings v. Lambert ...	290
Dusenburg v. Chesney	152
Deutsch v. Arnold	280
Eich v. Perk Dog Food Co.	280, 293
Elgin v. Winchester	152
Eliot v. Behner	139

	PAGE
Evans v. Schwartz	54
Finish Line Express v. City of Chicago	289
Foster v. Zeeko	149
Good Humor Corp. v. Mundelein	114
Gorman v. City of Chicago	263
Graul v. Adrion	24
Gridley v. Bloomington	229
Griffith v. Sanitary District of Chicago	36
Hagler v. Small	16
Hanley v. Moody	2
Herman v. Chicago	224
Herschel v. Dyra	240
Hershey Manufacturing Co. v. Adamowski	111
Hoffman v. Meir	6
Holister v. North	56
Horden v. Jordan	288
Housing Authority v. Dorsey	56
Houston v. Maywood	6
Hughes v. Illinois Public Aid Commission	67
I.S.K.O.N. v. Eaves	372
I.S.K.O.N. v. Griffith	239
I.S.K.O.N. v. Rochford	362
In Re Patterson's Estate	67
Jacobs v. City of Chicago	95
Kaku Naguno v. McGrath	67
Kanellos v. Cook County	95
Karzen v. American Air Lines	266
Kelly v. Retirement Board	87
Kerner v. State Employees Retirement System of Illinois ...	89
Kruse v. Streamwood Utility Corp.	378
Lamere v. Chicago	154
Lansing v. City of McClean	231
Larson v. Rockford	152

	PAGE
Lea v. Retirement Board of Policemen's Annuity and Benefit Fund of the City of Chicago	162
Leitch v. Sanitary District	288
Leopold v. Levin	293
Letter Edged in Black Press v. Public Building Commission of Chicago	72
Lincoln National Life Insurance v. McCarthy	82
Lopez v. Fitzgerald	177
McDaniel v. Glenn Falls Indemnity Co.	139
McKinney v. City of East St. Louis	88
Manconi v. Bilandic	146
Matter of Townsend	120
Mercadante v. City of Patterson	67
Merwyn v. City of Chicago	63
Meyer v. Meyer	67
Miles Square Service Corporation v. Zoning Board of Appeals	193
National Drag Racing Enterprises v. Kendall County	154
New Solidarity v. Rochford	29
Noble v. Illinois Liquor Control Commission	123
North Atlantic Cargo Rate Case	99
Northshore Post No. 21 v. Korzen	82
Oak Park Federal Savings v. Village of Oak Park	103
O'Laughlin v. City of Chicago	202
Oliver v. Retirement Board of Municipal Employees Annuity and Benefit Fund of Chicago	82
Oswego Community School District v. Goodrich	67
Paglini v. Chicago Police Board	26
Panozzo v. Rockford	56
Paper Supply Co. v. City of Chicago	255
Pecoy v. City of Chicago	82
People v. Chicago City R.Y. Co.	373
People v. Criswell	87
People ex rel. v. Beck	7

	PAGE
People ex rel. Conlon v. Mount	6
People ex rel. Douglas v. Barrett	16
People ex rel. Griffith v. Chicago	16
People ex rel. Hanrahan v. Beck	95
People ex rel. Mulvey v. Chicago	16
People ex rel. McDavid v. Barrett	16
People ex rel. Schmidt v. Yerger	16
People ex rel. Sharp v. Chicago	231
People ex rel. Sweetser v. City of Chicago	6
People v. Mann	20
People v. Tice	20
People v. Sherman	162
People v. Sprinkle	162
Peoples Gas, Light and Coke Co. v. Chicago	373, 215, 227
Peter v. Springfield	7
Peters v. City of Springfield	95
Pieman v. State	16
Pimper v. National Fire Insurance	139
Porter v. Loehr	16
Rainer v. Board of Trustees	16
Reed v. U.S.	22
Reinken v. Reinken	76
Rock v. Midwest Hunting and Fishing Club	232
Ray Export Co. Establishment v. Trustees of Columbia University	280
Rozhan v. Triangle Publications	280
Schuler v. Board of Education	16
Schneider v. Irvington	240
Scoa Industries, Inc. v. Howlett	262
Sears v. Chicago	227
Shanahan et al. v. Policemen's Annuity and Benefit Fund of Chicago	89
Sholson v. State	16

	PAGE
Shoot v. Illinois Liquor Control Commission	111
Sikes v. Moline Consumers	288
Silver Cross Hospital v. Boyder	19
Smith v. WGN, Inc.	280
Smith v. State	16
Solomon v. Solomon	76
South Holland v. Stein	240
State ex rel. Schoonover v. Crabhill	67
State of Missouri v. State of Illinois	288
State Toll Highway Commission v. Korzen	258
Time, Inc. v. Hill	293
Trustees of Schools v. LaSalle National Bank	290
Tucker v. People	36
Tyrrell v. Mayer	16
United States v. Bush	344
United States v. Thompson	22
Wallin v. Mitchell	231
White v. Ogilvie	111
Williams v. City of Chicago	260
Winfield v. Murcia and Byrne	76
Wolia v. Port of New York Authority	225